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6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
8

9 Case No. 8:10ML 02151 JVS (FMOx)

10 IN RE: Toyota Motor Corp.
11 Unintended Acceleration Marketing,
12 Sales Practices, and Products Liability
Litigation

ORDER GRANTING
DEFENDANTS' MOTIONS TO
DISMISS

13 This document relates to:

14 All Foreign Plaintiffs' Economic Loss
15 Cases.

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1 Currently before the Court are two Motions to Dismiss claims brought by a
2 putative class of foreign Plaintiffs.

3
4 This action arises out of Plaintiffs' purchase of vehicles designed,
5 manufactured, distributed, marketed, sold, and leased by Defendants Toyota Motor
6 Corporation dba Toyota Motor North America, Inc. ("TMC"), and its subsidiaries,
7 Toyota Motor Sales, U.S.A., Inc. ("TMS"), Toyota Motor North America, Inc.
8 ("TMNAI"), Toyota Motor Engineering and Manufacturing North America, Inc.
9 ("TMEMNAI"), and Toyota Motor Credit Corporation ("TMCC") (collectively,
10 "Toyota" or "the Toyota Defendants").¹

11
12 A putative class of foreign Plaintiffs² seeks damages for diminution in the
13

14 ¹ One of the Motions to Dismiss is brought by TMCC; TMCC is generally
15 referred to herein individually.

16 The second Motion to Dismiss is brought by the remaining Toyota
17 Defendants. An argument raised by all the Toyota Defendants is that Plaintiffs fail
18 to state a claim because their factual allegations fail to differentiate among the
19 various entities and instead make collective allegations against all the Toyota
20 Defendants. Thus, the Court's references to the Toyota Defendants collectively, to
21 subsets thereof, or to a specific entity individually, where relevant to the analyses
22 set forth herein, are purposeful. The Court has endeavored to be as specific and
23 precise as possible. Specifically, the Court uses "the U.S. Toyota Defendants" or
24 "the domestic Toyota Defendants" to refer to TMS, TMNAI, and TMEMNAI
25 collectively. Elsewhere, the Court discusses certain unnamed foreign Toyota
entities, and there, the Court finds it necessary to refer to "the named Toyota
Defendants" to differentiate between the named parties and certain unnamed
foreign entities.

² The Court considered Motions to Dismiss and Strike directed toward
similar claims asserted by a putative class of domestic Plaintiffs in the Economic

1 market value of their vehicles in light of acknowledged and/or perceived defects in
2 those vehicles. The operative Complaint addressed herein is the Amended Foreign
3 Economic Loss Master Consolidated Complaint (“AFELMCC”) (Docket No. 449).
4 In the AFELMCC, Plaintiffs assert claims under federal law and California law.³
5 Specifically, the AFELMCC asserts claims for (1) Violations of the Racketeer
6 Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961 et seq. (“RICO”);
7 (2) Violations of the Consumer Legal Remedies Act, Cal. Civ. Code §§ 1750, et
8 seq. (“CLRA”); (3) Violations of the California Unfair Competition Law, Cal. Bus.
9 & Prof. Code §§ 17200, et seq. (“UCL”); (4) Violation of the California False
10 Advertising Law, Cal. Bus. & Prof. Code §§ 17500, et seq. (“FAL”); (5) Breach of
11 Express Warranty, Cal. Com. Code § 2313; (6) Breach of the Implied Warranty of
12 Merchantability, Cal. Com. Code § 2314; (7) Revocation of Acceptance, Cal. Com.
13 Code § 2608; (8) Violations of the Magnuson-Moss Warranty-Federal Trade
14 Commission Improvement Act, 15 U.S.C. §§ 2301, et seq. (“MMA”); (9) Breach
15 of Contract/Common Law Warranty; (10) Fraud by Concealment; (11) Negligence;
16 (12) Products Liability/Design Defect; and (13) Unjust Enrichment.

17
18 In two separate Motions to Dismiss, the Toyota Defendants have moved
19 (1) pursuant to Fed. R. Civ. P. 12(b)(7), to dismiss for failure to join parties under
20

21 Loss Master Consolidated Complaint (“MCC”) (Docket No. 263), granting in part
22 and denying in part those Motions. (See Nov. 30, 2010 Order (Docket No. 510).)
23 The Court’s reference to “Plaintiffs” herein should be understood as referring only
24 to the foreign Plaintiffs who assert economic loss claims, except where, in context,
25 the reference clearly denotes another group of Plaintiffs.

³ The issue of choice of law is reserved for another day. (See Defs.’ Mem.
of Points and Authorities (Docket No. 663) (hereinafter “Defs.’ Mem.”) at 5.)

1 Fed. R. Civ. P. 19, and (2) pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss for
2 failure to state a claim upon which relief can be granted. (See Docket Nos. 657,
3 659, 661, 663, 664.) Plaintiffs have filed a joint Opposition thereto, and the
4 Toyota Defendants have filed Reply briefs. (See Docket Nos. 805 (Opposition),
5 906 (TMCC Reply), 935 (Reply of other Toyota Defendants).)

6
7 For purposes of this Order, the Court discusses all the issues even though
8 some individual issues may be dispositive. As set forth herein, the Court grants the
9 separate Motion to Dismiss of TMCC, dismissing all claims asserted against it with
10 prejudice.

11
12 Also as set forth herein, the Motion to Dismiss filed by the remaining
13 Toyota Defendants is also granted, on multiple grounds:

- 14
- 15 • Because the foreign Plaintiffs have failed to set forth factual
16 allegations establishing Article III standing, the Court concludes it
17 lacks subject-matter jurisdiction;
18
 - 19 • Because the Court lacks personal jurisdiction over certain
20 indispensable parties, the AFELMCC must be dismissed pursuant to
21 Rule 19 of the Federal Rules of Civil Procedure;
22
 - 23 • Because judicially noticed materials establish Plaintiffs cannot plead
24 plausible claims against the U.S. Toyota Defendants on the basis of
25 manufacture, sale, or lease of the allegedly defective vehicles, the

1 Court concludes certain contract- and warranty-based claims must be
2 dismissed;

- 3
- 4 • Because there is no cause of action for unjust enrichment under
5 California law, the claim for unjust enrichment must be dismissed;
6
 - 7 • Because the allegations in the AFELMCC fail to satisfy the
8 requirements for extraterritorial application of certain federal and state
9 statutes, those claims must be dismissed; and
10
 - 11 • Because plaintiffs have failed to set forth factual allegations that
12 satisfy the pleading-with-particularity requirement of Rule 9(b) of the
13 Federal Rules of Civil Procedure, Plaintiffs' RICO claims, state
14 common-law fraud claim, and state statutory claims must be
15 dismissed.
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I. Factual Allegations⁴

A. Similarity of the AFELMCC to the MCC

Upon examination, it is evident that the AFELMCC adopts the vast majority of the allegations set forth in the MCC, and the foreign Plaintiffs are proceeding on the same legal theories as the domestic Plaintiffs did in the MCC. Thus, the AFELMCC reflects pages upon pages of factual allegations that set forth verbatim factual allegations found in the MCC. (See generally Gilford Decl. at Ex. A (“redlined” comparison of the complaints).) Certain portions have been modified, such as the AFELMCC’s substitution of allegations about the foreign Plaintiffs for the MCC’s allegations regarding the domestic Plaintiffs. (Compare ¶¶ 36-78 with MCC ¶¶ 32-69.)⁵ Certain additions have been made to the AFELMCC to reflect certain international aspects of the foreign Plaintiffs’ allegations. (See, e.g., ¶¶ 2-5, 8, 13 (adding “worldwide” or “around the world” to the allegations), ¶ 7 (setting forth a list of foreign countries in which Toyota has been sued for events of sudden unintended acceleration (“SUA”)).) Other additions have been made to reflect additional claims made by the foreign Plaintiffs, most notably the RICO claim not

⁴ As it must, in considering whether the AFELMCC states a claim upon which relief can be granted, the Court accepts as true the factual allegations set forth by Plaintiffs. The Court notes that, in some instances, Plaintiffs have referred to specific documents in support of their factual allegations. These documents are not appended to the AFELMCC and, with one exception discussed elsewhere in this Order, have not been filed with the Court. As a result, subject to that one exception, these documents have not been examined by the Court, and the Court expresses no opinion regarding whether they support the allegations made in the AFELMCC.

⁵ Unless otherwise designated, all paragraph references in this Order refer to the AFELMCC.

1 asserted by the domestic Plaintiffs. (See ¶¶ 306-51.)

2
3 Upon examination, it is clear that the Court’s synthesis of the factual
4 allegations set forth in its November 30, 2010 Order (Docket No. 510 at 2:16
5 through 11:2) is applicable without modification to the AFELMCC.⁶ Additionally,
6 the foreign Plaintiffs set forth the factual allegations described below, which
7 include the naming of additional Defendants, allegations regarding the
8 international aspects of the core factual allegations, allegations related to the
9 differences in the putative classes of Plaintiffs, and allegations upon which
10 Plaintiffs’ RICO claims are based.

11
12 B. Allegations Regarding Defendants

13
14 Plaintiffs name three additional Defendants, TMNAI, TME MNAI, and
15 TMCC, that are not named as Defendants in the domestic Plaintiffs’ current
16 operative complaint.⁷ (Compare ¶ 1 with Second Amended Economic Loss Master
17 Consolidated Complaint (“SAELMCC”) ¶¶ 133-34.) According to the allegations
18 of the AFELMCC, all the Toyota Defendants collectively “were responsible for the
19 manufacture, design, distribution, sale and lease of tens of millions of vehicles, or

20
21 ⁶ In the interest of brevity, the Court does not set forth the full text of those
22 factual allegations here. Nor has the Court updated the citations to the record with
the paragraph numbers found in the AFELMCC.

23 ⁷ The foreign Plaintiffs allege that TMC “does substantial business in
24 California,” that TMS, TMNAI, and TMCC “are in California,” and that
25 TME MNAI “is a Kentucky Corporation” that is “a resident” of Kentucky. (¶¶ 28,
84.)

1 parts thereof, (under the Toyota, Lexus, and Scion brand names) throughout the
2 United States and worldwide, including but not limited to Mexico, China,
3 Germany, Turkey, Jamaica, Peru, South Africa, Egypt, Indonesia, Malaysia,
4 Philippines, Guatemala, Russia and Australia, that use an electronic throttle control
5 system (“ETCS” or “ETCS-i”).” (¶ 1.)

6
7 TMS is identified as “Toyota’s U.S. sales and marketing arm, which
8 oversees sales and other operations in 49 states.” (¶ 81.) “The decision to
9 withhold information from worldwide consumers . . . was made, in part, in
10 California” and “much of the conduct that forms the basis of the complaint
11 emanated from Toyota’s headquarters in Torrance, California.” (¶ 28.) “[E]ach
12 defendant was and is an agent of each of the remaining Defendants,” “[e]ach
13 defendant ratified and/or authorized the wrongful acts of each of the other
14 defendants,” and in light of “a unity of interests and ownership [among] the
15 Defendants . . . the acts of one are for the benefit [of] and can be imputed as the
16 acts of the others.”⁸ (¶ 86.)

17
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21 ⁸ This portion of the AFELMCC is a legal conclusion rather than a factual
22 allegation. As discussed in more detail below, in accordance with the Rule
23 12(b)(6) standard, the Court does not necessarily accept legal conclusions that are
24 impermissibly couched as factual allegations. See Ashcroft v. Iqbal, __ U.S. __,
25 129 S. Ct. 1937, 1949 (2009); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555
(2007). Nevertheless, the Court quotes this portion of the AFELMCC to give
context to Plaintiffs’ legal theories.

1 C. Allegations Regarding Plaintiffs

2
3 The named Plaintiffs include Plaintiffs (1) from Mexico, China, Germany,
4 Turkey, Jamaica, Peru, South Africa, Egypt, Indonesia, Malaysia, the Philippines,
5 Guatemala, Russia, and Australia; (2) who drive various year models of the Camry,
6 the Corolla, the RAV4, the Auris, the Tacoma, the Yaris, and the Altis; (3) who
7 bought their vehicles based on Toyota's advertisements regarding safety,
8 information in dealer brochures, information in the vehicles' warranties, and
9 information found on Toyota's website regarding safety; and (4) who received
10 recall notices, who had sticky pedal incidents, and who experienced events of
11 SUA. (See ¶¶ 36-78.) Plaintiffs allege that they purchased or leased vehicles that
12 are defective and that they therefore did not receive the benefit of their bargain
13 and/or they overpaid for their vehicles. (¶ 79.)

14
15 D. RICO Allegations⁹

16
17 Plaintiffs allege an "associated-in-fact" RICO enterprise consisting of the
18 Toyota Defendants, other unnamed worldwide affiliates, and Defendants'
19 "spokespersons." (¶ 306.) The enterprise conducted "Toyota's 'marketing,
20 advertising, promotion and sales and leasing' activities . . . by means of false
21 statements and omissions" regarding the safety of their vehicles. (*Id.*) Plaintiffs
22 allege a pattern of racketeering activity that includes mail fraud, wire fraud, money

23
24 ⁹ As with the allegations regarding agency, *supra*, in accordance with the
25 Rule 12(b)(6) standard, the Court does not accept legal conclusions that are
impermissibly couched as factual allegations.

1 laundering, and transfer of large sums of fraudulently obtained funds in interstate
2 or foreign commerce. (Id.)

3
4 Plaintiffs detail the alleged fraud as based on Toyota's marketing campaigns,
5 its failure to remedy safety risks after becoming aware of multiple incidents of
6 SUA, and its reassurance in its Warranty and Maintenance Guide regarding its
7 commitment to safety. (See ¶¶ 314-16.) Plaintiffs also allege that two of Toyota's
8 executives in charge of regulatory affairs, who are former employees of the
9 National Highway Traffic Safety Administration ("NHTSA"), made statements
10 designed to "stall or otherwise misdirect [NHTSA's] investigation[s]" into
11 incidents of SUA. (¶ 317; see ¶¶ 318-25.) Plaintiffs make allegations regarding
12 the falsity of Toyota's mailings to NHTSA in connection with NHTSA's
13 investigations into incidents of SUA, including Toyota's position that SUA cannot
14 occur in the absence of a driver engaging the accelerator pedal. (¶¶ 327-29.)
15 Similarly, Plaintiffs contend certain statements made by Toyota to the press,
16 denying any safety concerns with its vehicles, constitute predicate acts of
17 racketeering activity. (¶¶ 331-39, 342, 344, 346-47.)

18
19 II. Article III Standing

20
21 "Federal courts are required sua sponte to examine jurisdictional issues such
22 as standing." Chapman v. Pier 1 Imports (U.S.) Inc., 631 F.3d 939, 954 (9th Cir.
23 2011) (examining issue of standing even though defendant "failed to move to
24 dismiss under Federal Rule of Civil Procedure 12(b)(1)) (internal quotation marks
25 and citation omitted). Standing under Article III requires three elements. First,

1 Plaintiffs must suffer an “injury in fact,” which means that there must be a concrete
2 and particularized “invasion of a legally protected interest” that is actual or
3 imminent. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992). Second,
4 Plaintiffs must allege a causal connection between the injury and the conduct
5 complained of, which means that the injury must be “fairly traceable” to
6 Defendants’ actions. Id. Third, Plaintiffs must show that a favorable decision will
7 likely redress the injury. Id. at 561. Although Plaintiffs bear the burden of
8 establishing standing, “general factual allegations of injury resulting from the
9 defendant’s conduct may suffice” at the pleading stage. Id.

10
11 The factual allegations set forth in the AFELMCC do not expressly specify
12 that they are based on market conditions and effects within the United States, but it
13 appears in context that they are — certainly that was the Court’s assumption when
14 it considered arguments regarding the injury-in-fact requirement of standing in
15 connection with the MCC. (See ¶¶ 292-96; Nov. 30, 2010 Order (Docket No. 510)
16 at 16-17.) As applied to the foreign Plaintiffs, these allegations regarding market
17 effects within the United States are insufficient to confer an injury-in-fact.¹⁰ At a
18 minimum, the foreign Plaintiffs must allege publicity regarding SUA incidents in
19 the relevant secondary market for their vehicles, i.e., in their home countries. From
20 there, it is reasonable to infer that the adverse publicity led to decreased demand,

21
22 ¹⁰ The Toyota Defendants argue that, for this reason, the foreign Plaintiffs
23 fail to state a claim: by merely copying the domestic Plaintiffs’ factual allegations,
24 which, in turn, are measured by market conditions within the United States, the
25 foreign Plaintiffs fail to allege facts showing an economic loss. (See Defs.’ Mem.
at 4, 14.) While the Toyota Defendants’ arguments are well-taken, the Court
discerns a more fundamental problem with the foreign Plaintiffs’ allegations.

1 which, in turn, led to a drop in resale value. (See id.)¹¹ But the AFELMCC does
2 not do that.

3
4 Additionally, as discussed at length previously by the Court in connection
5 with the MCC, there must be specific allegations that each lead Plaintiff suffered
6 some loss. (Compare Nov. 30, 2010 Order (Docket No. 510) at 24-25 (examples
7 of factual allegations made by Plaintiffs who establish standing for each of the
8 Plaintiffs discussed) with id. at 26-27 (examples of factual allegations that fail to
9 establish standing for each of the Plaintiffs discussed).)

10
11 Because Plaintiffs have failed to set forth factual allegations establishing
12 Article III standing, the AFELMCC is dismissed in its entirety.

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18 ¹¹ Twombly strongly suggests, if it does not indeed compel, courts take into
19 account basic economic principles, where applicable, in analyzing the plausibility
20 of a claim. See 550 U.S. at 567-69. Twombly itself rejected the plausibility of an
21 antitrust claim based on a far more complex economic principle than the basic rules
22 of supply and demand upon which the Court here relies. Id. There, the Supreme
23 Court held that an antitrust claim was not plausible where economic behavior in a
24 market formerly dominated by “Government-sanctioned monopolists” was
25 explained by the ease with which would-be competitors could accept the lucrative
profits the former structure automatically conferred upon them. Id. at 568. Rather,
in the Supreme Court’s assessment, it was likely that those would-be competitors
recognized the risk one encounters when one “lives by the sword,” providing them
with the incentive to “sit tight,” expect their peers to do the same, and profit in
ways that subjected them to less risk. (Id. at 568-69.)

1 III. Judicial Notice

2
3 TMCC asks that the Court take judicial notice of its March 31, 2010, Form
4 10-K Filing with the United States Securities and Exchange Commission (“SEC”).
5 (See TMCC Request for Judicial Notice (“RJN”) (Docket No. 661).) Specifically,
6 TMCC asks the Court to judicially notice the nature of its business, which is
7 generally limited to providing financing for vehicle loans, leases, and insurance
8 products. (See TMCC RJN Ex. A at 4, 6, 11, & 75.)
9

10 The remaining Toyota Defendants ask that the Court take judicial notice of
11 certain documents regarding the worldwide standardization of Vehicle
12 Identification Numbers (“VINs”) by the International Organization for
13 Standardization (“ISO”). (See Defs.’ RJN at 2 (Docket No. 663-2).) These
14 documents identify a standardized system for assigning VINs that designate, *inter*
15 *alia*, the place the vehicle was manufactured. (See *id.* Ex. 1 at v; Ex. 2 at v.)
16

17 Additionally, the remaining Toyota Defendants ask that the Court take
18 judicial notice of a Field Technical Report which was produced in discovery and
19 which the Toyota Defendants contend is incorporated by reference in the
20 AFELMCC. (See Defs.’ RJN at 2 & Ex. 3; ¶¶ 161 & n.22.). Specifically,
21 Plaintiffs allege the following:
22

23 In a series of Field Technical Reports from 2006-2010
24 involving Toyota Camrys, technicians from Hong Kong confirmed
25 UA events and that these events were not caused by pedal or floor

1 mats. The UA events were duplicated without triggering a DTC
2 [diagnostic trouble code].¹² These technicians strongly urged TMS to
3 investigate since the problem was highly dangerous and the incidents
4 were stacking up. In many of these instances, the report noted that
5 “no effective rectification can be done at this moment” and that the
6 exact cause was “unknown.” These reports “strongly request TMS to
7 investigate this case a top priority.”

8
9 (¶ 161.) For support, Plaintiffs cite a document that is identified by Bates number,
10 but do not attach it to the AFELMCC. (See id. at n.22 (identifying a document
11 designated “TOY-MDL-88641”).)¹³

12
13 ¹² The significance of the diagnostic trouble code is explained elsewhere in
14 the AFELMCC:

15 [The Toyota technician-]confirmed SUA events
16 revealed another aspect of the defect — the failure of the
17 vehicle’s diagnostic tools to capture the malfunction. In
18 other words, no diagnostic trouble code (“DTC”) or fault
19 code was triggered during these SUA events. A properly
20 designed and manufactured vehicle would trigger a fault
21 when a SUA event occurs and force the vehicle into a
22 “limp home” mode.

23 ¶ 25.

24 ¹³ The Toyota Defendants ask that the Court take judicial notice of this
25 document in furtherance of an argument that Plaintiffs misrepresented the
contents of the Field Technical Report as being sent to TMS (in the United States)
to investigate rather than being sent to TMC (in Japan). (See Defs.’ Mem. at 13;
Reply at 6.) The AFELMCC, in quoting the Field Technical Report, indeed
incorrectly refers to “TMS” rather than “TMC.” (Compare ¶ 161 (quoting the
Report as stating “we strongly request TMS to investigate this case a top priority”

1 Pursuant to Federal Rule of Evidence 201, “[a] court shall take judicial
2 notice if requested by a party and supplied with the necessary information.” Fed.
3 R. Evid. 201(d). An adjudicative fact may be judicially noticed if it is “not subject
4 to reasonable dispute in that it is either (1) generally known within the territorial
5 jurisdiction of the trial court or (2) capable of accurate and ready determination by
6 resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid.
7 201(b). Generally, courts may take judicial notice of public documents. Lee v.
8 City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001). This general principle has
9 been applied to permit courts to judicially notice SEC filings. Metzler Inv. GMBH
10 v. Corinthian Colleges, Inc., 540 F.3d 1049, 1064 n.7 (9th Cir. 2008) (noting that
11 SEC filings are properly subject to judicial notice). Additionally, courts may take
12 judicial notice of documents incorporated by reference in the operative complaint.
13 See, e.g., al-Kidd v. Ashcroft, 580 F.3d 949, 954 n.6 (9th Cir. 2009).

14
15
16 and citing Bates No. TOY-MDL-88641) with Defs.’ RJN Ex. 3 at 33 (document
17 bearing Bates No. TOY-MDLID00088641, stating “we strongly request TMC to
18 investigate this case in top priority”).) Although the Court does not view this
19 discrepancy as anything more than a mere drafting error, which is found in the
20 SAELMCC as well as the AFELMCC (compare ¶ 161 with SAELMCC ¶ 214), all
parties (and the Court) should continue to take care to be as precise and accurate as
possible.

21 Nevertheless, although viewing the reference to TMS as a mere drafting
22 error, the Court notes that the reference is repeated in the Opposition, after
23 Plaintiffs were alerted of the inaccuracy, in connection with a discussion ostensibly
24 meant to address the Toyota Defendants’ argument regarding the purposeful nature
25 of the misstatement. (See Opp’n at 12 (“The technicians urged TMS to further
investigate the problems since they were highly dangerous and the numerous
instances were stacking up.”).) This is of obvious concern.

1 Plaintiffs do not voice any objection to the Toyota Defendants' requests.

2
3 Because the materials proffered by the Toyota Defendants embrace proper
4 subjects of judicial notice, the Court takes judicial notice of them and considers
5 them in connection with the pending motions. See Mir v. Little Co. of Mary
6 Hosp., 844 F.2d 646, 649 (9th Cir. 1988) ("In addition to the complaint, it is proper
7 for the district court to 'take judicial notice of matters of public record outside the
8 pleadings' and consider them for purposes of the motion to dismiss.").

9
10 IV. TMCC's Motion

11
12 Plaintiffs filed one Opposition to the two Motions to Dismiss. A review of
13 that Opposition reveals that Plaintiffs have failed to respond to the substance of
14 TMCC's arguments regarding the plausibility of the claims asserted against it.
15 TMCC contends that because the judicially noticed materials establish its business
16 is limited to providing financing and insurance, claims asserted against it based on
17 the design, manufacture, sale, and marketing of allegedly defective vehicles are not
18 plausible.

19
20 No Plaintiff alleges he or she obtained a loan, lease, or insurance through
21 TMCC. To the contrary, the AFELMCC is completely devoid of any substantive
22 factual allegation addressed specifically to TMCC. TMCC's publicly filed SEC
23 statement evidences operations that are wholly incompatible with the theories of
24 liability set forth in the AFELMCC based on the design, manufacture, sale, and
25 marketing of allegedly defective vehicles. (See TMCC RJN Ex. A at 4, 5, 11.)

1 TMCC's public financial statements do not reveal any income, assets, equity, or
2 cash flow items that are incompatible with their stated operations; indeed, those
3 items are indicative of operations that are incompatible with Plaintiffs' allegations.
4 (See TMCC RJN Ex. A at 75-78 (showing income, assets, changes to shareholder
5 equity, and cash flow items associated with marketable securities, investments,
6 receivables, and leasehold investments).)

7
8 Illustrating that the application of the "plausibility" requirement must be
9 undertaken in a context-specific manner, Twombly, an antitrust case, focused on
10 certain behavior, that although consistent with an anti-competitive conspiracy, was
11 nevertheless plausibly explained by free market behavior. See Twombly, 550 U.S.
12 at 567 ("Hence, a natural explanation for the noncompetition alleged is that the
13 former Government-sanctioned monopolists were sitting tight, expecting their
14 neighbors to do the same thing."). In contrast, Iqbal, in which Bivens claims were
15 asserted against high-ranking government officials, focused on likely law-
16 enforcement objectives, concluding certain legitimate objectives were the only
17 plausible conclusion that could be drawn from the plaintiff's factual allegations
18 against them. Iqbal, 129 S. Ct. at 1952. Here, too, the Court must make that
19 context-specific inquiry, with the benefit of the judicially noticeable SEC 10-K
20 filing.

21
22 The question the Court must answer is whether Plaintiffs' claim against the
23 entity that deals solely with the financing component of a substantial portion of
24 Toyota and Lexus vehicles may be subject to liability under Plaintiffs' theories. A
25 claim is "facial[ly] plausib[le]" where a plaintiff sets forth factual allegations that

1 “allow[] the court to draw the reasonable inference that the defendant is liable for
2 the misconduct alleged.” Id. at 1949. As to TMCC, in light of the comprehensive
3 judicially noticed materials which establish the nature of TMCC’s business, the
4 Court, in the absence of argument to the contrary from Plaintiffs, must conclude
5 that the AFELMCC does not set forth a plausible claim against TMCC.

6
7 TMCC’s Motion to Dismiss is granted; the claims against TMCC are
8 dismissed with prejudice.

9
10 V. Rule 19: Necessary and Indispensable Parties

11
12 The Toyota Defendants argue that the AFELMCC should be dismissed
13 under Federal Rule of Civil Procedure 12(b)(7) for failure to join necessary and
14 indispensable parties, as required by Rule 19. (Defs.’ Mem. at 27.)

15
16 A. Legal Standard

17
18 1. Rule 19(a)

19
20 Under Rule 19, if joinder will not destroy subject-matter jurisdiction, an
21 absent person must be joined if (a) the Court cannot afford complete relief among
22 the existing parties without that person, or (b) that person has an interest in the
23 litigation, and proceeding without that person would impair their ability to protect
24 the interest, or cause an existing party to incur double or inconsistent obligations
25 because of the interest. Fed. R. Civ. P. 19(a)(1). If an entity’s presence is critical

1 to the disposition of important issues in the case, and/or its evidence will either
2 support the complaint or bolster the defense, it is a necessary party. Freeman v.
3 NW. Acceptance Corp., 754 F.2d 553, 559 (5th Cir. 1985).

4
5 The term “complete relief” in Rule 19(a) refers to relief between the named
6 parties, not as between a named party and an absent person sought to be joined.
7 Perrian v. O’Grady, 958 F.2d 192, 196 (7th Cir. 1992). However, courts must also
8 consider how effective a judgment for either party would be at resolving the
9 controversy. Evergreen Park Nursing & Convalescent Home, Inc. v. Am.
10 Equitable Assurance Co., 417 F.2d 1113, 1115 (7th Cir. 1969).

11
12 The goal of Rule 19(a)(1) is to protect the interests of the parties by
13 affording complete adjudication of the dispute. Judicial economy is aided by
14 avoiding repeated lawsuits concerning the same subject matter. Schutten v. Shell
15 Oil Co., 421 F.2d 869 (5th Cir. 1970)

16
17 2. Rule 19(b)
18

19 If a person who is required to be joined, if feasible, cannot be joined, the
20 Court must determine whether, “in equity and good conscience, the action should
21 proceed among the existing parties or should be dismissed.” Fed. R. Civ. P. 19(b).
22 To make this determination, the Court should consider: (1) the extent to which a
23 judgment rendered in the person’s absence might prejudice that person or the
24 existing parties; (2) the extent to which any prejudice could be lessened or avoided
25 by protective provisions in the judgment, shaping the relief, or other measures;

1 (3) whether a judgment rendered in the person's absence would be adequate; and
2 (4) whether the plaintiff would have an adequate remedy if the action were
3 dismissed for nonjoinder. Id.

4
5 "Whether a person is 'indispensable,' that is, whether a particular lawsuit
6 must be dismissed in the absence of that person, can only be determined in the
7 context of particular litigation." Provident Tradesmens Bank & Trust Co. v.
8 Patterson, 390 U.S. 102, 118 (1968).

9
10 B. Discussion

11
12 Plaintiffs assert claims against Toyota for the "the manufacture, design,
13 distribution, sale and lease of tens of millions of vehicles, or parts thereof,"
14 throughout the United States and worldwide. (¶ 1.) As an initial matter, Plaintiffs
15 recognize that TMC is the parent corporation of the other Toyota entities who
16 design, manufacture, market, distribute, and sell Toyota and Lexus vehicles
17 worldwide. (¶ 80.) Plaintiffs allege that Toyota, through marketing and
18 advertising worldwide, promised that cars with ETCS would be safe and reliable,
19 and at the same time concealed a serious safety problem. (¶¶ 2-3.) Plaintiffs
20 further allege that the named Toyota Defendants "are and were responsible for the
21 manufacture, design, distribution, sale and lease of vehicles, having the same SUA
22 defect as those Toyota vehicles sold worldwide." (¶¶ 28, 33.) The decision to
23 withhold information from consumers worldwide was made, in part, in California.
24 (Id.)

1 1. Necessary Parties

2
3 Toyota argues that the foreign entities who manufactured, distributed,
4 advertised, repaired, sold and/or leased Plaintiffs' vehicles must be joined as
5 necessary parties. (Defs.' Mem. at 27.)
6

7 Whether the foreign entities are necessary depends on whether they were
8 active participants in the alleged wrongful conduct, or whether the conduct
9 complained of was solely that of the parent company, TMC, and the other named
10 Toyota entities. Haas v. Jefferson Nat'l Bank of Miami Beach, 442 F.2d 394, 398
11 (5th Cir. 1971); see also Polanco v. H.B. Fuller Co., 941 F. Supp. 1512, 1520-22
12 (D. Minn. 1996) (when a plaintiff seeks to hold a parent company liable for the
13 conduct of a foreign subsidiary, the subsidiary is a necessary and indispensable
14 party); cf. Dernick v. Bralorne Res. Ltd., 639 F.2d 196, 199 (5th Cir. 1981)
15 (however, where the parent is the principal actor, the subsidiary is not necessary
16 and indispensable).
17

18 Here, Plaintiffs seek to hold the Toyota Defendants liable for alleged
19 economic loss suffered as a result of the propensity of Toyota vehicles to
20 experience SUA, a defect the Toyota Defendants allegedly knew about, but hid
21 from consumers. Plaintiffs' allegations target Toyota entities allegedly responsible
22 for "the manufacture, design, distribution, sale and lease" of Plaintiffs' vehicles.
23 (¶ 1.)
24

25 A review of the record makes clear that the U.S. Toyota Defendants did not

1 manufacture or distribute Plaintiffs' foreign vehicles.¹⁴ (See Gilford Decl. ¶¶ 5, 9-
2 12; Defs.' RJN Ex. 1 at v; Ex. 2 at v.) The record suggests that the domestic
3 Toyota Defendants also may not be responsible for design, as this responsibility
4 falls to TMC, the parent corporation. (Gilford Decl. ¶ 4.) Further, there are no
5 allegations in the AFELMCC suggesting that the domestic Toyota Defendants
6 performed repairs on Plaintiffs' foreign vehicles. There is some question as to
7 whether the domestic Toyota Defendants were responsible for advertising viewed
8 by Plaintiffs, (compare id. ¶ 3 (domestic entities not responsible for marketing
9 foreign-made vehicles) with Opp'n at 7, 11 (belated allegation that U.S. advertising
10 reached foreign Plaintiffs)), but resolution of this issue is not dispositive of the
11 Rule 19 analysis.

12
13 Plaintiffs assert various causes of action implicating the vehicle
14 manufacturer and designer (e.g., tort-based claims including products liability) and
15 the vehicle distributor and seller/lessor (e.g., contract-based claims including
16 warranty claims). Tellingly, Plaintiffs do not allege that any of the named Toyota
17 entities manufactured, distributed, and/or sold (or leased) their vehicles. Instead,
18 they allege that the named Defendants "manufacture, design, distribut[e], [sell] and
19 lease [] vehicles, having the same SUA defect as those Toyota vehicles sold

20
21 ¹⁴ To the extent that vehicles owned by putative members of the foreign
22 class were manufactured in the United States (e.g., Plaintiffs Banton, Centeno and
23 Villalobos), these Plaintiffs fall into the definition of the putative class set forth by
24 the "domestic" economic loss Plaintiffs. (See Defs.' Mem. at 8 n.3; SAELMCC
25 ¶ 397 (defining the "Nationwide Consumer Class" as "[a]ll individuals or entities
who purchased, owned or lease a Toyota vehicle manufactured, designed, or sold
in the United States with ETCS.").) As such, they are not properly named in the
AFELMCC.

1 worldwide.” (§ 28 (emphasis added).) At best, Plaintiffs’ allegations regarding
2 deceptive marketing practices may pertain to the named Toyota Defendants, but
3 some of these factual allegations do not appear in the AFELMCC, and were instead
4 raised for the first time in the Opposition.

5
6 Plaintiffs argue that they are not attempting to hold the present Toyota
7 Defendants liable for the conduct of foreign subsidiaries. (Opp’n at 33-34.)
8 However, because Plaintiffs’ claims implicate the entities responsible for the
9 design, manufacture, distribution, and/or sale (or lease) of their vehicles, the Court
10 finds that the foreign entities who undertook these activities with respect to
11 Plaintiffs’ vehicles are necessary to afford complete relief. Fed. R. Civ. P.
12 19(a)(1); Freeman, 754 F.2d at 559; see also Polanco, 941 F. Supp. at 1521
13 (required joinder of a foreign manufacturer in a product liability action brought
14 against domestic parent; manufacturer has “distinct and strong interest in legal
15 determinations regarding the safety of its products.”). If Plaintiffs prevail, they
16 cannot obtain complete relief against the named Toyota Defendants, including
17 TMC, because their claims seek to hold the Toyota Defendants liable, in part, for
18 the actions of unnamed subsidiaries and/or sister companies. Likewise, if the
19 Toyota Defendants prevail, they cannot be afforded complete relief because
20 foreign Plaintiffs unhappy with the result could turn around and sue the absent
21 Toyota entities in their home countries.

22
23 Although Plaintiffs do not argue that it is unnecessary to join the unnamed
24 foreign entities because they may be joint tortfeasors, the Court is mindful of the
25 general rule that joint tortfeasors are permissive, rather than necessary, parties.

1 Temple v. Synthes Corp., Ltd., 498 U.S. 5, 7 (1990). Even if the unnamed foreign
2 entities are found to be joint tortfeasors, an exception to this rule exists when the
3 absent party is more than a key witness, but also an active participant in the
4 allegations that are critical to the disposition of the litigation. Laker Airways, Inc.
5 v. British Airways, PLC, 182 F.3d 843, 848 (11th Cir. 1999). As discussed above,
6 this criterion is met. The unnamed entities were actively involved in the conduct
7 giving rise to the allegations at the heart of the AFELMCC.

8
9 Because TMC is not liable for its foreign subsidiaries' actions, and the other
10 named Toyota Defendants are not liable for their sister companies' actions, absent
11 an agency or alter ego relationship,¹⁵ the Court cannot afford complete relief to
12 Plaintiffs in the absence of the unnamed foreign entities. See Schroeter GMBH &
13 KO., KG. v. Crawford & Co., No. 09-946, 2009 WL 1408100, at *4 (E.D. Pa. May
14 19, 2009).

15
16 Moreover, the unnamed foreign entities have an interest in the litigation
17 because each respective entity's liability will necessarily be at issue. Plaintiffs
18 seek an injunction ordering Toyota to implement an ETCS fail-safe, which would
19 also necessarily impact the unnamed manufacturing entities. A judgment entered

20
21 ¹⁵ The AFELMCC sets forth no factual allegations that might support the
22 conclusion that the named Toyota Defendants share a principal/agent relationship
23 with the absent foreign entities — the AFELMCC fails to mention the existence of
24 the foreign Toyota entities, or their involvement in the alleged conduct (e.g.,
25 manufacturing, distribution). As discussed more fully below, the only reference to
an agency relationship pertains to the named Toyota Defendants only, see ¶ 86, and
is "a legal conclusion couched as a factual allegation," which the Court disregards.
Iqbal, 129 S. Ct. at 1949-50 (quoting Twombly, 550 U.S. at 555).

1 against the named Toyota Defendants might have a preclusive effect on the
2 unnamed foreign entities and weaken their bargaining position and/or impair their
3 ability to protect their own interests in any current and future litigation. (See, e.g.,
4 ¶ 7 (ongoing litigation in 15 countries); Opp’n at 33 (possible future litigation
5 against foreign manufacturers and dealerships).) Fed. R. Civ. P. 19(a)(1); Dou Yee
6 Enters. (S) PTE, Ltd. v. Advantek, Inc., 149 F.R.D. 185, 189 (D. Minn. 1993)
7 (citing Acton Co., Inc. v. Bachman Foods, Inc., 668 F.2d 76, 78 (1st Cir. 1982)
8 (even where domestic plaintiff and foreign subsidiary appear closely aligned, there
9 is no evidence that U.S. counsel can adequately protect the foreign entity’s
10 interests)).

11 12 2. Feasibility

13
14 “If an absentee is a necessary party under Rule 19(a), the second stage is for
15 the court to determine whether it is feasible to order that the absentee be joined.
16 Rule 19(a) sets forth three circumstances in which joinder is not feasible: when
17 venue is improper, when the absentee is not subject to personal jurisdiction, and
18 when joinder would destroy subject matter jurisdiction.” E.E.O.C. v. Peabody
19 Western Coal Co., 400 F.3d 774, 779 (9th Cir. 2005).

20
21 There is nothing in the record to suggest that the Court has personal
22 jurisdiction over the unnamed foreign entities. In fact, these entities appear to be
23 foreign corporations lacking contacts with the United States. Thus, joinder is not
24 feasible.

1 3. Indispensable Parties

2
3 Under Rule 19(b), it is still possible “for the case to proceed without the
4 joinder of the so-called ‘necessary’ absentee[s].” Peabody Western, 400 F.3d at
5 779 (emphasis added). This is because parties are indispensable under Rule 19(b)
6 only if they are “‘persons who not only have an interest in the controversy, but an
7 interest of such a nature that a final decree cannot be made without either affecting
8 that interest, or leaving the controversy in such a condition that its final termination
9 may be wholly inconsistent with equity and good conscience.’” Id. at 780 (quoting
10 Shields v. Barrow, 58 U.S. 130, 139, 17 How. 130 (1854) (emphasis added)).

11
12 Whether “in equity an good conscience the action should be dismissed”
13 based on the absence of an indispensable party is “always a matter of judgment”
14 that courts should approach with flexibility and on a case-by-case basis. Haas, 442
15 F.2d at 398 & n.5 (citing Provident, 390 U.S. at 118).

16
17 a. Prejudice to Absent and Existing Parties

18
19 The Toyota Defendants argue that the unnamed foreign entities could be
20 prejudiced if the action goes forward without them because those entities will be
21 unable to mount their own defense. (Defs.’ Mem. at 28; Reply at 17-18.)
22 Similarly, the named Toyota Defendants will be prejudiced in their defense
23 because they will not be able to obtain pretrial discovery and critical evidence
24 without the presence of the foreign parties. (Defs.’ Mem. at 28; Reply at 18.)
25

1 Plaintiffs counter that no prejudice to the named Toyota Defendants or the
2 absent parties has been shown. (Opp'n at 32.) Plaintiffs contend that they may
3 initiate other actions against the foreign manufacturers and dealerships without
4 prejudice to the named Toyota Defendants or the unnamed parties. (Id. at 33
5 (suggesting that Plaintiffs are not seeking to hold the named Toyota Defendants
6 liable for the actions of their subsidiaries and/or sister corporations).)

7
8 i. Absent Parties
9

10 Just as the foreign subsidiary in Polanco would be prejudiced by the inability
11 to defend its product safety and marketing methods, and may be subject to liability
12 in a suit against its parent corporation, the Court finds that the unnamed foreign
13 entities here would be prejudiced by the denial of an opportunity to defend their
14 product safety and marketing practices. Polanco, 941 F. Supp. at 1523; see also
15 Bailey v. Toyota Motor Corp., No. IP01-1456-C-T/K, 2003 WL 23142185, at *9
16 (S.D. Ind. Oct. 31, 2003) (finding prejudice resulting from the possibility of
17 contradictory conclusions by different courts). Even though a finding by this
18 Court that the unnamed entities' products are defective and/or unsafe would not be
19 binding on the unnamed foreign entities, a judgment against TMC and/or the
20 domestic Toyota defendants regarding the safety of the vehicles identified in
21 Plaintiffs' complaint speaks "directly and adversely to the quality of [the unnamed
22 entities'] products." Polanco, 941 F. Supp. at 1521.

23
24 That the unnamed foreign entities may be subsidiaries of TMC and/or sister
25 companies or affiliates of the remaining named Toyota Defendants, which is not

1 clear from the record, nor discussed in either party's brief, does not change the
2 analysis at this point. Despite the "obvious community of interest," id. at 1522, the
3 various Toyota entities may have in arguing that the ETCS is not defective, those
4 interests may diverge at trial. For example, because the named Toyota entities
5 cannot be held liable for the acts of their subsidiaries, sister companies, and/or
6 affiliates, absent an agency relationship, they may attempt to show that the absent
7 entities are responsible for the allegedly defective design. See id. On the other
8 hand, if the absent entities were fully represented, they may want to ascribe blame
9 to TMC and/or the other named defendants in order to deflect liability from
10 themselves. See Gay v. Avco Fin. Servs., Inc., 769 F. Supp. 51, 57 (D.P.R. 1991)
11 (real danger where parent may shield itself by shifting blame to absent subsidiaries,
12 and then in a later action, the subsidiaries are deprived of their best defense that it
13 was the parent who acted wrongly). Because the interests of the absent parties may
14 not be adequately protected by the named defendants, there is no mitigation of
15 prejudice. See Dainippon Screen Mfg. Co., Ltd. v. CFMT, Inc., 142 F.3d 1266,
16 1272 (Fed. Cir. 1998) (prejudice can be mitigated where the interests of the absent
17 party are protected by named defendants).

18
19 Similar to Gay, where the case was dismissed because the complaint failed
20 to name foreign subsidiaries who were likely responsible for the alleged conduct,
21 the Court sees the likelihood here of "multiple litigation, and of factfinding
22 hamstrung by the absence of centrally implicated actors in the drama." 769 F.
23 Supp at 57.

24
25 ii. Existing Parties

1 The Court finds the named Toyota defendants' argument that they will be
2 unable to obtain pretrial discovery in South Africa insufficient to demonstrate
3 prejudice under Rule 19(b). "Rule 19 does not list the need to obtain evidence
4 from an entity or individual as a factor bearing upon whether or not a party is
5 necessary or indispensable to a just adjudication."¹⁶ Johnson v. Smithsonian Inst.,
6 189 F.3d 180, 188 (2d Cir. 1999) (internal quotation and alteration omitted).
7 However, the Court is mindful that a "defendant may properly wish to avoid
8 multiple litigation, or inconsistent relief, or sole responsibility for a liability he
9 shares with another." Provident, 390 U.S. at 110. Because inconsistent outcomes
10 and assignment of liability pose concerns based on the current record, the interests
11 of the named defendants should not be ignored.

12
13 b. Lessening Prejudice
14

15 The Court conceives of no solution to lessen prejudice in the absence of the
16 unnamed foreign entities, and the parties have not suggested one.
17
18
19

20
21 ¹⁶ Although access to evidence is not a consideration under Rule 19(b), the
22 Court notes the practical difficulties of defending against liability by proving a
23 negative (i.e., proving that defective products, if any, are the responsibility of the
24 absent foreign entities). Cf. United States v. Cortez-Rivera, 454 F.3d 1038, 1042
25 (9th Cir. 2006) ("For this reason, fairness and common sense often counsel against
requiring a party to prove a negative fact, and favor, instead, placing the burden of
coming forward with evidence on the party with superior access to the affirmative
information.")

1 c. Adequacy of Judgment

2
3 The Supreme Court has interpreted this factor to refer to the interests of
4 courts and the public “in settling disputes in wholes, whenever possible.”
5 Provident, 390 U.S. at 111.
6

7 Dismissal of this action would not allow the dispute to be settled as a whole.
8 Rather, Plaintiffs would have to file individual suits in each jurisdiction in order
9 for relevant courts to exercise personal jurisdiction over all unnamed foreign
10 entities. While this outcome suggests that a judgment of dismissal is inadequate,
11 the alternative, going forward without joinder, produces the same result. Namely,
12 if this case proceeds, in order for Plaintiffs to obtain complete relief over the
13 vehicle manufacturers, for example, individual suits in the relevant foreign
14 jurisdictions must be initiated. As discussed above, in the absence of agency
15 relationships, Plaintiffs may not hold TMC and/or the other named Toyota
16 Defendants liable for the conduct of their subsidiaries or sister companies,
17 respectively. Thus, because no forum will provide complete relief in a single
18 action, this factor is neutral.
19

20 d. Adequate Remedy for Plaintiff

21
22 Plaintiffs will have an adequate remedy if the action is dismissed because, as
23 they have already recognized, they could file suit in their respective home
24
25

1 countries.¹⁷ Taking the allegations in the AFELMCC as true, presumably the
2 relevant foreign countries would have jurisdiction over the domestic Toyota
3 Defendants based on their contacts with the foreign Plaintiffs in foreign
4 jurisdictions.

5
6 C. Conclusion as to Joinder

7
8 Because Plaintiffs' allegations implicate myriad unnamed foreign entities,
9 those entities are necessary parties under Rule 19(a).¹⁸ It is not feasible to join
10 these entities because the Court lacks personal jurisdiction over them. Because this
11 dispute cannot be adjudicated in equity and good conscience without the unnamed
12 foreign entities, the AFELMCC must be dismissed on this basis alone.

13
14 VI. Standard for Dismissal Pursuant to Rule 12(b)(6)

15
16 Pursuant to Rule 12(b)(6), a plaintiff must allege "enough facts to state a
17 claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S.

18
19 ¹⁷ Although the Court has not yet fully considered the matter, preliminarily,
20 it appears to the Court that, as the Toyota Defendants have demonstrated in their
21 forum non conveniens motion, the named foreign Plaintiffs likely have a remedy in
each of the affected foreign jurisdictions. (Docket No. 776 at 9-28.)

22 ¹⁸ This conclusion applies with equal force to Plaintiffs' RICO claim, in
23 which Plaintiffs allege involvement of the unnamed foreign entities. (¶ 306.) See
24 Knipe v. Washington Square Capital, 116 F.3d 484, 1997 WL 341818, at *1-2 (9th
25 Cir. June 19, 1997) (unpublished) (district court properly dismissed RICO claim,
and also dismissed complaint under Rule 19 for failure to join necessary and
indispensable party).

1 544, 570 (2007). A claim has “facial plausibility” if the plaintiff pleads facts that
2 “allow[] the court to draw the reasonable inference that the defendant is liable for
3 the misconduct alleged.” Ashcroft v. Iqbal, ___ U.S. ___, 129 S. Ct. 1937, 1949, 173
4 L. Ed. 2d 868 (2009).

5
6 In resolving a Rule 12(b)(6) motion under Twombly, the Court must follow
7 a two-pronged approach. First, the Court must accept all well-pleaded factual
8 allegations as true, but “[t]hread-bare recitals of the elements of a cause of action,
9 supported by mere conclusory statements, do not suffice.” Iqbal, 129 S. Ct. at
10 1949. Nor must the Court “accept as true a legal conclusion couched as a factual
11 allegation.” Id. at 1949-50 (quoting Twombly, 550 U.S. at 555). Second,
12 assuming the veracity of well-pleaded factual allegations, the Court must
13 “determine whether they plausibly give rise to an entitlement to relief.” Id. at
14 1950. This determination is context-specific, requiring the Court to draw on its
15 experience and common sense; there is no plausibility “where the well-pleaded
16 facts do not permit the court to infer more than the mere possibility of
17 misconduct.” Id.

18
19 In addition to the factual allegations set forth in the complaint, courts may
20 consider documents referenced in the complaint, upon which the complaint
21 necessarily relies, and the authenticity of which no party questions. Parrino v.
22 FHP, Inc., 146 F.3d 699, 706 (9th Cir. 1998) (“We therefore hold that a district
23 court ruling on a motion to dismiss may consider a document the authenticity of
24 which is not contested, and upon which the plaintiff’s complaint necessarily
25 relies.”); United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003) (“Even if a

document is not attached to a complaint, it may be incorporated by reference into a complaint if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff's claim."). Moreover, as noted previously, courts may also consider judicially noticed materials. Mir, 844 F.2d at 649.

VII. General Sufficiency of Plaintiffs' Allegations

The remaining Toyota Defendants challenge the sufficiency of Plaintiffs' allegations on general grounds applicable to more than one cause of action. Specifically, the Toyota Defendants contend that Plaintiffs' claims are either deficiently pled or are, as pled, implausible within the meaning of Twombly and Iqbal.

The Toyota Defendants correctly contend, as noted by the Court in connection with the factual allegations set forth in the AFELMCC, that the AFELMCC reflects pages upon pages of factual allegations that set forth verbatim factual allegations found in the domestic Plaintiffs' MCC. (See Defs.' Mem. at 3-5.) The foreign Plaintiffs acknowledge this factual overlap, but appear to contend that the basic factual allegations underlying their claims are essentially the same as the factual allegations underlying the claims of the domestic Plaintiffs. (See Opp'n at 7.) Briefly stated, both sets of Plaintiffs allege that the Toyota Defendants designed, manufactured, marketed, and sold (or leased) vehicles that they eventually realized were defective, and that rather than disclosing and remedying that defect, the Toyota Defendants instead engaged in a cover-up of the vehicles' defect(s). The essence of the Toyota Defendants' sufficiency-of-pleading

1 challenge is that the foreign Plaintiffs have not “includ[ed] any additional facts in
2 their complaint that could support their contention that the U.S. Toyota Defendants
3 are somehow liable for transactions and events that took place outside of the
4 United States.” (See Defs.’ Mem. at 8.)

5
6 First, the Toyota Defendants take issue with Plaintiffs’ failure to
7 differentiate among them. To be sure, Plaintiffs have named five legally separate
8 and distinct, albeit related, corporate entities as Defendants in this action, and
9 factual allegations differentiating among these five entities are scant. Generally,
10 Plaintiffs do not allege that any particular Defendant engaged in any particular
11 action; to the contrary, the AFELMCC instead alleges that collectively, all five of
12 the Toyota Defendants, were “responsible for the manufacture, design, distribution,
13 sale and lease” of allegedly defective vehicles sold not only in the United States
14 but also throughout fourteen specified foreign countries. (¶ 1.)¹⁹

15
16
17 ¹⁹ That is not to say there is no differentiation of the Toyota Defendants.
18 Some factual allegations do focus on a particular Defendant. (See e.g., ¶¶ 21, 23
19 (referencing testimony before Congress of TMC officers); ¶ 22 (testimony of
20 TMNAI officer); ¶ 93, 98, 101-03 (referring to TMS press releases); ¶ 94 (referring
21 to a TMC press release); ¶ 121 (“TMS asked TMC to investigate”).) These
22 allegations, however, are the exception, not the rule. (See ¶¶ 89-92, 95-97, 99-
23 100, 104-05, 107-10 (allegations regarding statements made by “Toyota”); ¶¶ 112-
24 18 (collective allegations regarding defects); ¶¶ 119-20, 122-23 (“Toyota” received
25 complaints).) Indeed, despite the fact that the foreign Plaintiffs added TMNAI as a
Defendant, the sole substantive allegation against TMNAI individually is that it
provided a report to NHTSA that “summarizes the foreign claims against Toyota”.
(¶ 8.) Moreover, although the foreign Plaintiffs added TMEMNAI and TMCC as
Defendants, they set forth no substantive factual allegations against those two
entities individually.

1 The explanation, perhaps, may be found in legal conclusions set forth by
2 Plaintiff in the AFELMCC at ¶ 86:

3
4 “[E]ach defendant was and is an agent of each of the remaining
5 Defendants,” that “[e]ach defendant ratified and/or authorized the
6 wrongful acts of each of the other defendants,” and that in light of “a
7 united of interests and ownership [among] the Defendants . . . the acts
8 of one are for the benefit [of] and can be imputed as the acts of the
9 others.”

10
11 (Id.; accord Opp’n at 10 (“Importantly, there is unity of interest and ownership
12 [among] the defendants such that the acts of one are for the benefit of others.”).)
13 Plaintiffs may not rest on legal conclusions regarding agency that are cast as
14 factual allegations. Iqbal, 129 S. Ct. at 1949. Notwithstanding any requirement
15 under Rule 11 of the Federal Rules of Civil Procedure,²⁰ these boilerplate cross-
16 authority/cross-agency/ratification allegations run afoul of Twombly and Iqbal, and
17 thus, the Court strikes paragraph 86 of the AFELMCC.

18
19 This is not to say that Plaintiffs may not make the same allegations against
20 all Defendants. Rather, it is to say that if Plaintiffs do so, that action must be by
21 conscious choice and with specific purpose, and Plaintiffs’ allegations must be

22
23 ²⁰ Rule 11(b)(3) requires that “the factual contentions have evidentiary
24 support or, if specifically so identified, will likely have evidentiary support after a
25 reasonable opportunity for further investigation or discovery.” Fed. R. Civ. P.
11(b)(3).

1 supportable by something more than mere conclusory allegations of mutual and
2 overlapping agencies pursuant to which Defendants at all time acted.

3
4 Next, the Toyota Defendants contend, and Plaintiffs effectively concede, that
5 the VINs set forth in the AFELMCC establish that the vehicles purchased by
6 Plaintiffs were not manufactured in the United States. (See Defs.' Mem. at 10-11;
7 Defs.' RJN Ex. 1 at 1 (establishing that a portion of all VINs shall designate the
8 country of manufacture); id. Ex. 2 at 1, 4 (assigning codes to specific countries);
9 Opp'n at 10.) By the same token, the Toyota Defendants correctly point out that
10 Plaintiffs themselves identify the countries in which their vehicles were purchased,
11 and with three exceptions, none of those vehicles were purchased in the United
12 States. (See ¶¶ 36-78.)

13
14 Where the vehicles were not manufactured in the United States and were not
15 sold (or leased) in the United States, claims based on manufacture or sale (or lease)
16 of the allegedly defective vehicles against the U.S. Toyota Defendants, when the
17 mutual agency allegations are stripped from the AFELMCC, become implausible.
18 Thus, to the extent a claim set forth in the AFELMCC is asserted against a U.S.
19 Toyota Defendant and is premised on the manufacturing or sale (or lease) of a
20 vehicle, it is implausible. These claims include a substantial portion of the foreign
21 Plaintiffs' contract- and warranty- related claims, i.e., their fifth through ninth
22 causes of action (claims for breach of express warranty, breach of implied warranty
23 of merchantability, revocation, violations of the MMA, and breach of
24 contract/common law warranty), which are dismissed with prejudice as to the U.S.
25 Toyota Defendants to the extent that they are premised on the sale (or lease) of an

1 allegedly defective vehicle.²¹

2
3 In sum, the Court strikes paragraph 86 of the AFELMCC as improper legal
4 conclusions, merely couched as factual allegations, and unsupported by the
5 “factual content” required by Iqbal. 129 S. Ct. at 1949. Moreover, for the reasons
6 set forth above, the Court dismisses with prejudice the fifth through ninth causes of
7 action as to the U.S. Toyota Defendants to the extent that they are premised on the
8 sale (or lease) of an allegedly defective vehicle. Also, for the reasons set forth
9 infra, the thirteenth cause of action (unjust enrichment) is dismissed with prejudice
10 as to all Defendants.²²

11
12 VIII. Extraterritorial Application of Federal and State Statutes

13
14 The Toyota Defendants argue that Plaintiffs’ claims under RICO, MMA, and
15

16
17 ²¹ The Court’s tentative Order dismissed with prejudice (as to the U.S.
18 Toyota Defendants) the entirety of these claims. However, at the hearing,
19 Plaintiffs’ counsel, in seeking leave to replead claims against TEMA, suggested
20 that these claims could be based on the sale of parts manufactured in the United
21 States by the U.S. Toyota Defendants but incorporated into allegedly defective
22 vehicles assembled elsewhere. Therefore, the Court affords leave to replead these
23 claims in part, subject to the offer of proof requirements set forth supra section XI.

24 ²² As explained in a previous Order of the Court in connection with claims
25 asserted by the domestic Plaintiffs, the foreign Plaintiffs’ quasi-contractual claim
for unjust enrichment may not be maintained against any Defendant. (See Nov. 30,
2010 Order (Docket No. 510) at 87-89, 103 (dismissing unjust enrichment claim
with prejudice because such a claim is not recognized as an independent cause of
action under California law).) It is dismissed with prejudice for the reasons stated
therein.

1 California's CLRA, UCL, and FAL must be dismissed because the statutes do not
2 apply extraterritorially. Plaintiffs respond that the fraudulent conduct giving rise to
3 Plaintiffs' claims originated in California and/or was furthered by actions taken by
4 the U.S. Toyota Defendants, and thus their claims are properly pled under each of
5 these federal and state statutes.

6
7 The Court addresses the extraterritorial application of RICO, MMA, and the
8 California statutes to Plaintiffs' claims below.²³

9
10 A. RICO Claims

11
12 1. Summary of Parties' Contentions

13
14 Toyota argues that Plaintiffs' RICO claims must be dismissed because the
15 marketing, purchase, sale, or lease of Toyota vehicles by Plaintiffs, and the alleged
16 harm stemming from those transactions, took place outside the United States.
17 (Defs.' Mem. at 19-20.) RICO is silent as to its extraterritorial application, and
18 thus under the analysis articulated in Morrison v. Nat'l Australia Bank Ltd., __
19 U.S. __, 130 S. Ct. 2869 (2010), RICO has no application to claims involving
20 conduct or events that occurred outside the United States. (Defs.' Mem. at 20
21 (citing Norex Petrol. Ltd. v. Access Indus., Inc., 631 F.3d 29, 32-33 (2d Cir. 2010)
22 & Cedeno v. Intech Group, Inc., 733 F. Supp. 2d 471, 473-74 (S.D.N.Y. 2010)).

23
24 _____
25 ²³ The Court consider the substantive aspects of these claims in Sections IX
and X.A.

1 Because the key transactions forming the bases for Plaintiffs' claims all arose or
2 occurred extraterritorially, and because merely alleging some domestic conduct
3 cannot support extraterritorial application of RICO, Toyota contends that
4 Plaintiffs' RICO claims must be dismissed. (Defs.' Mem. at 22; Reply at 11.)
5

6 Plaintiffs counter that "Congress intended for RICO to have extraterritorial
7 application." (Opp'n at 22.) Plaintiffs allege that they were "harmed by the
8 conduct that occurred in California — namely, the false advertising that began in
9 California, the intentional deceit regarding the number of consumer complaints and
10 the accidents and the spurious assurances that the defect was attributable to the
11 driver, rather than a defect in the product." (Id.) Put differently, Toyota's
12 fraudulent conduct "that led to the distribution, sale and lease of vehicles in other
13 countries . . . originated, continued and was nurtured by the U.S. Toyota
14 Defendants." (Id.) Thus, contrary to Toyota's position, "the key transactions
15 forming the bases for [Plaintiffs'] claims arose out of the U.S., i.e., the
16 investigation into the SUA defects, the response to the acceleration problem,
17 reprimands by NHTSA for concealing defects, remedies fashioned to address the
18 consumer complaints, response to allegations covering up the severity of the
19 incidents and revelation of serious defects." (Id.) Toyota received thousands of
20 complaints from consumers worldwide, including those in foreign countries, but
21 continued to conceal defects and market their products worldwide. (Id. at 22-23.)
22 Accordingly, Plaintiffs submit that their RICO claims are properly pled.
23
24
25

1 2. Discussion

2
3 The analysis of RICO's extraterritorial application begins with the Supreme
4 Court's decision in Morrison, which decided "whether § 10(b) of the Securities
5 Exchange Act of 1934 provides a cause of action to foreign Plaintiffs suing foreign
6 and American defendants for misconduct in connection with securities traded on
7 foreign exchanges." 130 S. Ct. at 2869, 2875. Morrison held that § 10(b) did not
8 provide a cause of action because it applies only to "transactions in securities listed
9 on domestic exchanges . . . and domestic transactions in other securities." Id. at
10 2884.

11
12 In reaching its decision, the Court made clear that courts must presume that a
13 statute does not apply extraterritorially unless Congress clearly expressed its
14 affirmative intention to give the statute extraterritorial effect: "When a statute
15 gives no clear indication of an extraterritorial application, it has none." Id. at
16 2877-78. Since there was "no affirmative indication in the Exchange Act that
17 § 10(b) applies extraterritorially," the Court concluded that it did not. Id. at 2883.
18 In this case, there can be no dispute that RICO is silent as to its extraterritorial
19 application. Poulos v. Caesars World, Inc., 379 F.3d 654, 663 (9th Cir. 2004)
20 ("RICO itself is silent as to its extraterritorial application."); Norex Petrol., 631
21 F.3d at 32-33 (same). Accordingly, and contrary to Plaintiffs' unsupported
22 contention that "Congress intended for RICO to have extraterritorial application"
23 (id.), the Court concludes that RICO does not apply extraterritorially. Norex
24 Petrol., 631 F.3d at 32-33.

1 Plaintiffs attempt to evade this extraterritorial limitation by arguing that the
2 “key transactions” giving rise to their claims originated in the United States.
3 Morrison acknowledged that the presumption against extraterritorial application of
4 a statute was not always dispositive. 130 S. Ct. at 2884. The Morrison plaintiffs,
5 for example, contended that they sought no more than domestic application of
6 § 10(b) because the corporate defendant and its senior executives “engaged in
7 deceptive conduct manipulating [corporate defendant’s] financial models” and
8 “made misleading public statements” domestically — that is, in Florida. Id. at
9 2883-84. However, the Court cautioned that “the presumption against
10 extraterritorial application would be a craven watchdog indeed if it retreated to its
11 kennel whenever some domestic activity is involved in the case” because “it is a
12 rare case of prohibited extraterritorial application that lacks all contact with the
13 territory of the United States.” Id. at 2884 (emphasis in original). The Court held
14 that “the place where the deception originated,” even if in the United States, did
15 not alter the Court’s analysis because “the focus of the Exchange Act is . . . upon
16 purchases and sales of securities in the United States.” Id. (emphasis added).
17 Because the securities in question were not listed on “a domestic exchange, and all
18 aspects of the purchases complained of by [plaintiffs] who still have live claims
19 occurred outside the United States,” the Court held that plaintiffs failed to state a
20 claim. Id. at 2888.

21
22 It is unclear how Morrison’s logic, which evaluates the “focus” of the
23 relevant statute, precisely translates to RICO. See id. at 2888 (Breyer, J.,
24 concurring) (noting that while § 10(b) does not cover the fraudulent activity
25 alleged in Morrison, other “state law or other federal fraud statutes, see, e.g., 18

1 U.S.C. § 1341 (mail fraud), § 1343 (wire fraud), may apply”); European Cmty. v.
2 RJR Nabisco, Inc., No. 02-CV-5771 (NGG)(VVP), 2011 WL 843957, at *4
3 (E.D.N.Y. March 8, 2011) (stating that the “focus [of a statute] is not necessarily
4 the ‘bad act,’ or the actus reus, prohibited by the statute,” but “[r]ather . . . ‘the
5 object[] of the statute’s solicitude,’ the activities ‘the statute seeks to regulate
6 [and] parties or prospective parties to those [activities] that the statute seeks
7 protect.’”) (quoting Morrison, 130 S. Ct. at 2881). The Court agrees in principle
8 that “the focus of RICO is on the enterprise as the recipient of, or cover for, a
9 pattern of criminal activity.” Cedeno, 733 F. Supp. 2d at 474; European Cmty.,
10 2011 WL 843957, at *4 (concluding that “it is the ‘enterprise’ that is the object of
11 the statute’s solicitude, and the ‘focus’ of the statute.”). Thus, the outer boundaries
12 of RICO’s application under Morrison are not hard to discern. See Cedeno, 733 F.
13 Supp. 2d at 474 (dismissing RICO claim against persons and entities associated
14 with the government of Venezuela because “the alleged enterprise and the impact
15 of the predicate activity upon it are entirely foreign”); Norex Petrol., 631 F.3d at
16 31, 33 (dismissing RICO claim alleging a “widespread racketeering and money
17 laundering scheme with the goal of seizing control over most of the Russian oil
18 industry” because “[t]he slim contacts with the United States alleged by [plaintiff]
19 are insufficient to support extraterritorial application of the RICO statute”). What
20 is less clear, however, is RICO’s application to an allegedly domestic enterprise
21 whose effects are felt outside the United States. Compare European Cmty., 2011
22 WL 843957, at *4 (applying nerve center test that looks to the “brains” of the
23 enterprise to determine its location), with United States v. Philip Morris USA, Inc.,
24 __ F. Supp. 2d __, 2011 WL 1113270, at *4-5 (D.D.C. March 28, 2011)
25 (evaluating the conduct of a RICO defendant, including where its activities and

1 statements took place, to determine RICO liability).

2
3 While the Toyota Defendants argue that RICO's application is precluded
4 because the marketing, purchase, sale, or lease of Toyota vehicles by Plaintiffs, and
5 the alleged harm stemming from those transactions, took place outside the United
6 States, these transactions are not necessarily dispositive as long as the enterprise,
7 which engaged in a pattern of racketeering activity, operated domestically. In
8 other words, were foreign Plaintiffs to bring a RICO claim against an alleged
9 enterprise operating in the United States, consisting largely of domestic "persons,"
10 engaging in a pattern of racketeering activity in the United States, and damaging
11 Plaintiffs abroad, these foreign Plaintiffs might well state a claim consistent with
12 Morrison's holding. However, given the inadequacies of the AFELMCC identified
13 herein, particularly those concerning Plaintiffs' RICO claims, the Court cannot
14 conclude that Plaintiffs' RICO claims match the hypothetical previously described.

15
16 Accordingly, Plaintiffs' RICO claims are dismissed.

17
18 B. MMA

19
20 1. Summary of Parties' Contentions

21
22 The Toyota Defendants argue that Plaintiffs' MMA claims must be
23 dismissed because the statute does not contain explicit language regarding its
24 extraterritorial application. (Defs.' Mem. at 22.) Plaintiffs oppose on the grounds
25 that Toyota made both express and implied warranties, and Plaintiffs "relied on the

1 marketing, brochures and advertising that started in California to purchase their
2 vehicles.” (Opp’n at 24.)

3
4 2. Discussion

5
6 The parties agree that the MMA does not contain explicit language
7 regarding its extraterritorial application, (Defs.’ Mem. at 22; Opp’n at 23), and the
8 Court concludes that the MMA does not apply extraterritorially. Morrison, 130 S.
9 Ct. at 2877-78. Moreover, as indicated previously, the Court has dismissed all
10 domestic Toyota Defendants with respect to Plaintiffs’ warranty claims — implied
11 or otherwise — leaving only TMC as a remaining Defendant. Morrison
12 undoubtedly bars application of the MMA based on warranty claims asserted by
13 foreign plaintiffs against foreign defendants. See id.

14
15 Accordingly, Plaintiffs’ MMA claims are dismissed.

16
17 C. California’s CLRA, UCL, and FAL

18
19 1. Summary of Parties’ Contentions

20
21 The Toyota Defendants argue that Plaintiffs’ CLRA, UCL, and FAL claims
22 must be dismissed because the California statutes do not have an extraterritorial
23 reach. (Defs.’ Mem. at 22.) That is, they argue that neither the CLRA, the UCL,
24 nor the FAL apply to provide relief for non-California residents for conduct
25 occurring outside of California. (Id.) The Toyota Defendants claim that the

1 AFELMCC alleges the “key transactions and events forming the basis for
2 Plaintiffs’ claims occurred not only outside of California, but outside of the United
3 States.” (*Id.* at 23.) The Toyota Defendants argue, for example, that Plaintiffs
4 allege the cars were owned or leased outside of California, in Plaintiffs’
5 “respective countries” (§ 27); the alleged SUA incidents occurred outside of the
6 United States (§§ 36-55; 57-78); and Plaintiffs saw advertisements, most likely
7 outside of the United States. (Defs.’ Mem. at 23.) They also argue that Plaintiffs’
8 allegations cannot establish the “constitutionally-mandated ‘significant contact’
9 with California” that is required to maintain an action under the California
10 consumer protection statutes. (*Id.* at 23 (citing *Tidenberg v. Bidz.com, Inc.*, No.
11 CV 08-5553 PSG (FMOx), 2009 WL 605249, at *4 (C.D. Cal. March 4, 2009)).)²⁴

12
13 Plaintiffs argue that the foreign Plaintiffs “relied on marketing, brochures,
14 and advertising that started in California to purchase their vehicles.” (Opp’n at
15 24.) However, the AFELMCC does not set forth factual allegations to support this
16 claim, and Plaintiffs have not set forth specific citations or further argument in
17 their Opposition brief.

18
19
20 ²⁴ The Court notes that Plaintiffs here have alleged more than the plaintiff
21 alleged in *Tidenberg*. In that case, the plaintiff alleged only that the defendant’s
22 principal place of business was in California, but she did not allege the injury took
23 place in California or that defendants’ unlawful conduct occurred in California.
24 *Tidenberg*, 2009 WL 605249, at *5. Here, Plaintiffs have alleged that “much of
25 the conduct that forms the basis of the complaint emanated from Toyota’s
headquarters in Torrance, California.” (§ 28.) However, as shown below,
Plaintiffs have not sufficiently connected this allegation with advertising or
marketing conduct in California that caused injuries in their respective countries.

1 2. Discussion

2
3 Plaintiffs have not set forth factual allegations showing that the Toyota
4 Defendants' activities in California are connected with the advertising and
5 marketing efforts that are allegedly responsible for foreign Plaintiffs' injuries. One
6 allegation in the AFELMCC, which is identical to the language in the MCC, is that
7 California is the situs for "much of the conduct that forms the basis of the
8 complaint." (Compare MCC ¶ 28 with ¶ 33.) The problem with Plaintiffs'
9 allegation is that it does not establish who developed, designed, or disseminated
10 advertising to each of the Plaintiffs' home countries. Moreover, Plaintiffs'
11 allegations that Defendants "marketed, advertised and sold automotive vehicles in
12 this state having the same SUA defect as Toyota vehicles sold worldwide" and that
13 "[t]he primary sale, marketing and advertising arm of Toyota is located in this
14 District" (¶ 33) fail to connect a specific Defendant or Defendants with marketing
15 or advertising practices overseas. With these examples as a backdrop of the
16 general deficiencies contained in the AFELMCC, the Court now turns to Plaintiffs'
17 CLRA, UCL, and FAL claims.

18
19 a. CLRA and UCL

20
21 State statutory remedies under the CLRA and UCL may be available to non-
22 California residents if those persons are harmed by wrongful conduct occurring in
23 California. Wershaba v. Apple Computer, Inc., 91 Cal. App. 4th 224, 242 (2001)
24 (affirming certification of nationwide class where out-of-state class members were
25 deceived by representations "disseminated from" California); Norwest Mortg., Inc.

1 v. Superior Court, 72 Cal. App. 4th 214, 224-25 (1999) (vacating trial court's order
2 granting class certification to non-California residents for conduct that occurred
3 outside of California). As the California Court of Appeal noted in Norwest
4 Mortgage, the insurance company's headquarters and principal place of operations
5 were outside of California, and therefore California had no interest in regulating
6 conduct unconnected to California. Id. at 223-25. Moreover, the court found that
7 "the UCL contains no express declaration that it was designed or intended to
8 regulate claims of nonresidents arising from conduct occurring entirely outside of
9 California." Id. at 222. Importantly, these cases did not address whether the state
10 laws protected plaintiffs who are neither residents of California, nor residents of
11 the United States.²⁵

12
13 The Toyota Defendants cite to Norwest Mortgage, Tidenberg, and Churchill
14 Village, LLC v. Gen. Elec. Co., 169 F. Supp. 2d 1119, 1126-27 (N.D. Cal. 2000),
15 for the proposition that non-California residents cannot bring UCL or FAL claims
16 where conduct or injuries do not occur in California. (Defs.' Mem. at 23-24.) In
17 Norwest Mortgage, the court held that conduct between non-California residents

18
19 ²⁵ The Court finds a corollary with respect to the extraterritorial reach of
20 federal legislation, noting that the Supreme Court has declined to apply a federal
21 statute abroad unless Congress explicitly intends such a result. See EEOC v.
22 Arabian Am. Oil Co., 499 U.S. 244, 248 (1991) (overruled by statute on other
23 grounds). Here, there is no indication the California Legislature intended for either
24 the UCL or the CLRA to apply to residents of other countries whose only
25 connection to California is purchasing a vehicle in reliance on representations that
may have disseminated from California. Moreover, the Court fails to see how
California would have an interest in preventing fraudulent practices where a
plaintiff living overseas cannot allege a connection between their harm and
corporate actions in California.

1 occurring outside of California by defendants with headquarters outside of
2 California could not form the basis of an actionable UCL claim. Norwest Mortg.,
3 72 Cal. App. 4th at 218. In Tidenberg, the court found that the plaintiff had not
4 alleged “significant contact” with California and the plaintiff lacked standing to
5 bring UCL and FAL claims. Tidenberg, 2009 WL 605249, at *5. In Churchill
6 Village, the court held that a defendant’s in-state sales in California were
7 insufficient to establish a nexus with California to support a UCL claim. The
8 Toyota Defendants argue that none of the Plaintiffs have pled sufficient facts that
9 they were harmed by conduct occurring in California. (Defs.’ Mem. at 23.)
10

11 Plaintiffs argue that these cases are inapposite because the conduct “occurred
12 entirely outside [California].” (Opp’n at 24.) Plaintiffs argue that the “unique
13 situation in this case is that the history of deception promulgated by Toyota spans
14 local, domestic and foreign plaintiffs, unlike in Churchill [Village], Norwest
15 [Mortgage], and Tidenberg.” (Id.) However, Plaintiffs have not alleged facts to
16 support this argument in their AFELMCC. They have alleged only that “the
17 decision to . . . engage in deceptive marketing was made, in part, in California.”
18 (§ 28.) The Court agrees that in theory a foreign plaintiff could state a CLRA or
19 UCL claim based on California conduct having effects outside California.
20

21 However, the Court finds that Plaintiffs’ allegations are insufficient to
22 distinguish the case from Norwest, in which no conduct occurred in California,²⁶
23

24 ²⁶ Although the Toyota Defendants have significant connections with
25 California, Plaintiffs have not alleged that marketing decisions about the
representations each Plaintiff saw in his or her home country were made in

1 and Tidenberg and Churchill, in which some conduct occurred in California (but
2 what occurred was nonetheless insufficient to support a UCL claim).²⁷ In
3 determining whether the UCL and CLRA apply to non-California residents, courts
4 consider where the defendant does business, whether the defendant's principal
5 offices are located in California, where class members are located, and the location
6 from which advertising and other promotional literature decisions were made.
7 Wershaba, 91 Cal. App. 4th at 241-42 (citing Clothesrigger, Inc. v. GTE Corp.,
8 191 Cal. App. 3d 605, 613 (1987)). Here, Plaintiffs have not alleged with
9 sufficient detail that the point of dissemination from which advertising and
10 promotional literature that they saw or could have seen is California. Accordingly,
11 Plaintiffs' claims under the UCL and CLRA are dismissed because these California
12 statutes cannot provide relief for non-California residents who cannot allege a
13 sufficient connection to California.

14
15 b. FAL
16

17 Courts have recognized that the FAL is limited to application in California.
18 See, e.g., Churchill Village, 169 F. Supp. 2d at 1127. The FAL prohibits false or
19 misleading statements "made or disseminated before the public in this state" and
20
21 _____
22 California.

23 ²⁷ CLRA claims were not asserted in these cases, but the Court sees no
24 reason not to apply their analysis to the CLRA claim alleged here. Chavez v. Blue
25 Sky Natural Beverage Co., 268 F.R.D. 365, 379 (N.D. Cal. 2010) (California
consumer protection laws, including CLRA, apply to nonresident plaintiffs who
establish significant contacts between California and the claims asserted).

1 “from this state before the public in any state .” Cal. Bus. & Prof. Code § 17500.
2 The Court sees no reason to extend the protection of the FAL beyond the plain
3 meaning of the statute to cover statements that are not made “before the public of
4 this state” and are not sufficiently alleged to be “from this state.” Plaintiffs cannot
5 recover on an FAL claim because they are not California residents. Accordingly,
6 the Court dismisses this claim as well.²⁸

7
8 **IX. RICO Claims**

9
10 The Toyota Defendants argue that Plaintiffs have failed to state a claim for
11 violation of RICO. For the following reasons, the Court agrees.

12
13 **A. Elements and Pleading Requirements**

14
15 “The elements of a civil RICO claim are as follows: ‘(1) conduct (2) of an
16 enterprise (3) through a pattern (4) of racketeering activity (known as ‘predicate
17 acts’) (5) causing injury to plaintiff’s ‘business or property.’” Living Designs, Inc.
18 v. E.I. Dupont de Nemours & Co., 431 F.3d 353, 361 (9th Cir. 2005) (quoting
19 Grimmett v. Brown, 75 F.3d 506, 510 (9th Cir. 1996)). An “enterprise” is defined

20
21 ²⁸ During the hearing, the Court stated that Plaintiffs could replead, if they
22 so chose, the factual allegations supporting this claim, and they are free to replead
23 their advertising-based claims under the UCL and CLRA. However, upon further
24 reflection, the Court has determined that the scope of the FAL statute simply does
25 not allow non-California residents to recover for statements that were not made or
disseminated before the public in California. Thus, this claim is dismissed with
prejudice.

1 to include “any individual, partnership, corporation, association, or other legal
2 entity, and any union or group of individuals associated in fact although not a legal
3 entity.” 18 U.S.C. § 1961(4). Racketeering activity is any act indictable under any
4 of the statutory provisions listed in 18 U.S.C. § 1961(1). A “pattern of
5 racketeering activity” requires the commission of at least two such acts within a
6 ten-year period. 18 U.S.C. § 1961(5).

7
8 Plaintiffs allege that “Defendants, [their] worldwide affiliates, and their
9 salespersons” comprise the RICO enterprise. (¶ 306.) Plaintiffs allege that the
10 Toyota Defendants have engaged in the following predicate acts of racketeering
11 activity: mail fraud in violation of 18 U.S.C. § 1341, wire fraud in violation of 18
12 U.S.C. § 1343, laundering of monetary instruments in violation of 18 U.S.C.
13 § 1956, and interstate transportation of more than \$5,000 knowing the same to
14 have been taken by fraud in violation of 18 U.S.C. § 2314. (¶ 306.) These
15 predicate acts are grounded in fraud. Accordingly, the pleading requirements of
16 Rule 9(b) apply to the alleged predicate acts. See Edwards v. Marin Park, Inc., 356
17 F.3d 1058, 1065-66 (9th Cir. 2004) (Rule 9(b) “applies to civil RICO fraud
18 claims.”) (citing Alan Neuman Prods., Inc. v. Albright, 862 F.2d 1388, 1392 (9th
19 Cir. 1989)); In re All Terrain Vehicle Litig., 771 F. Supp. 1057, 1059-60 (C.D. Cal.
20 1991) (applying 9(b) to predicate acts of mail fraud, wire fraud, and interstate
21 transportation of stolen property); Best Deals on TV, Inc. v. Naveed, No. C 07-
22 1610 SBA, 2007 WL 2825652, at *7 (N.D. Cal. Sept. 26, 2007) (“Most courts have
23 held that allegations of money laundering must satisfy 9(b)’s requirements because
24 money laundering involves an element of fraud.”) (citations omitted); Spitzer v.
25 Abdelhak, No. CIV. A. 98-6475, 1999 WL 1204352, at *5 (E.D. Pa. Dec. 15,

1 1999) (applying Rule 9(b) where the alleged predicate acts were mail fraud, wire
2 fraud, money laundering, and interstate transportation of fraudulently obtained
3 money because “[a]ll of these predicate acts contain an element of fraud”).
4

5 Under Rule 9(b), “[a]llegations of fraud must be accompanied by the who,
6 what, when, where, and how of the misconduct charged.” Vess v. Ciba Geigy
7 Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003) (internal quotation marks
8 omitted). In the context of RICO, Rule 9(b) requires that the Plaintiffs “detail with
9 particularity the time, place, and manner of each act of fraud, plus the role of each
10 defendant in each scheme.” Lancaster Cmty. Hosp. v. Antelope Valley Hosp.
11 Dist., 940 F.2d 397, 405 (9th Cir. 2001) (citing Fed. R. Civ. P. 9(b)). A plaintiff
12 may not simply lump together multiple defendants without specifying the role of
13 each defendant in the fraud. Swartz v. KPMG LLP, 476 F.3d 756, 764 (9th Cir.
14 2007).
15

16 Plaintiffs fail to allege the “where” and “who” of the predicate acts with the
17 requisite particularity. Although Plaintiffs include allegations regarding where
18 each Plaintiff lives and where each Plaintiff purchased or leased his or her vehicle,
19 Plaintiffs do not allege where they were exposed to the alleged misrepresentations.
20 Moreover, the allegations of racketeering activity repeatedly ascribe conduct to
21 “Toyota” or “Defendants” generally. (See, e.g., ¶¶ 314-15, 326-37, 339, 341, 345,
22 348-50.) Plaintiffs lump all of the Defendants together instead of “attribut[ing]
23 specific conduct to individual defendants.” Moore v. Kayport Package Express,
24 Inc., 885 F.2d 531, 541 (9th Cir.1989). The allegations fail to inform each of the
25 five Toyota Defendants of its particular role in the predicate acts. Accordingly, the

1 AFELMCC fails to state a claim for RICO violation against the Toyota Defendants
2 because it does not “reasonably notify the defendants of their purported role in the
3 scheme,” which is “perhaps the most basic consideration underlying Rule 9(b).”
4 Vicom, Inc. v. Harbridge Merchant Servs., Inc., 20 F.3d 771, 778 (7th Cir. 1994)
5 (internal quotation marks and citations omitted).

6
7 Accordingly, the Court finds that the Plaintiffs have failed to state a claim
8 for violation of RICO because they have not adequately alleged predicate acts of
9 racketeering activity. Although this deficiency provides an independent basis for
10 dismissing Plaintiffs’ RICO claim, the Court notes that additional deficiencies exist
11 with respect to Plaintiffs’ allegations under each of the subsections of § 1962.

12
13 B. Section 1962(a)
14

15 Section 1962(a) makes it “unlawful for any person who has received any
16 income derived . . . from a pattern of racketeering activity or through collection of
17 an unlawful debt . . . to use or invest . . . any part of such income, or the proceeds
18 of such income, in acquisition of any interest in, or the establishment or operation
19 of” an enterprise. 18 U.S.C. § 1962(a).

20
21 “A plaintiff must show that the defendant’s RICO violation was not only a
22 ‘but for’ cause of his injury, but that it was a proximate cause as well.” Oki
23 Semiconductor Co. v. Wells Fargo Bank, N.A., 298 F.3d 768, 773 (9th Cir. 2002)
24 (citing Holmes v. Sec. Investor Prot. Corp., 503 U.S. 258, 268-69 (1992)). To
25 adequately allege proximate cause, a “plaintiff seeking civil damages for violation

1 of § 1962(a) must allege facts tending to show that he or she was injured by the use
2 or investment of racketeering income.” Sybersound Records, Inc. v. UAV Corp.,
3 517 F.3d 1137, 1149 (9th Cir. 2008) (quoting Nugget Hydroelectric, L.P. v. Pac.
4 Gas & Elec. Co., 981 F.2d 429, 437 (9th Cir. 1992)). Alleging that a defendant
5 reinvested “proceeds from alleged racketeering activity back into the enterprise to
6 continue its racketeering activity is insufficient to show proximate causation.” Id.
7 (citations omitted). Otherwise, “almost every pattern of racketeering activity by a
8 corporation would be actionable under § 1962(a), and the distinction between
9 § 1962(a) and § 1962(c) would become meaningless.” Westways World Travel v.
10 AMR Corp., 182 F. Supp. 2d 952, 960 (C.D. Cal. 2001) (quoting Brittingham v.
11 Mobil Corp., 943 F.2d 297, 305 (3d Cir. 1991), overruled on other grounds by
12 Jaguar Cars, Inc. v. Royal Oaks Motor Car Co., Inc., 46 F.3d 258 (3d Cir. 1995)).
13 The Ninth Circuit therefore has held that Plaintiffs must allege an injury that is
14 “separate and distinct from the injury flowing from the predicate act” in order to
15 plead a violation of § 1962(a). Sybersound Records, 517 F.3d at 1149.

16
17 The only injury asserted by Plaintiffs is the economic loss associated with
18 the decreased value of their vehicles.²⁹ (See ¶ 350.) This alleged economic loss is
19 the same injury that Plaintiffs assert has flowed from the Toyota Defendants’

20
21 ²⁹ In their Opposition, Plaintiffs suggest that they also have alleged physical
22 injury resulting from the defects, (Opp’n at 28), but they ignore the fact that their
23 class is not defined to cover personal injury (¶¶ 297-98), and that nowhere in the
24 AFELMCC do Plaintiffs allege that they sustained physical injuries as a result of
25 the Toyota Defendants’ allegedly fraudulent conduct, let alone as a result of the use
or investment of racketeering proceeds. But more importantly, RICO only covers
harm to “business or property.” 28 U.S.C. § 1964(c); Living Designs, 431 F.3d at
361.

1 predicate acts. (Id.) Plaintiffs have not alleged that they sustained any other injury
2 that was caused by any of the Defendants' alleged use or investment of
3 racketeering income. Thus, Plaintiffs have not alleged any injury that is "separate
4 and distinct" from the economic loss that Plaintiffs allege flowed from the
5 predicate acts themselves. Sybersound Records, 517 F.3d at 1149.

6
7 Accordingly, Plaintiffs have not stated a claim for violation of § 1962(a).

8
9 C. Section 1962(b)

10
11 Section 1962(b) makes it unlawful "to acquire or maintain . . . any interest in
12 or control of" an enterprise "through a pattern of racketeering activity or through
13 collection of an unlawful debt." 18 U.S.C. § 1962(b). To state a claim under this
14 subsection, a plaintiff must allege "1) the defendant's activity led to its control or
15 acquisition over a RICO enterprise, and 2) an injury to plaintiff resulting from
16 defendant's control or acquisition of a RICO enterprise." Wagh v. Metris Direct,
17 Inc., 363 F.3d 821, 830 (9th Cir. 2003) (internal quotation marks and citation
18 omitted).

19
20 The Toyota Defendants argue that Plaintiffs have failed to state a claim for
21 violation of this subsection because Plaintiffs have not alleged that the Toyota
22 Defendants' racketeering activity led to their acquisition of control of an
23
24
25

1 enterprise.³⁰ (Defs.’ Mem. at 25; Reply at 14-15.) Plaintiffs respond that the
2 Toyota Defendants’ “act of omitting and giving false statements shows [Toyota’s]
3 control and acquisition over a RICO enterprise.” (Opp’n at 28-29.) Plaintiffs’
4 argument is inapposite. Alleging that the Toyota Defendants possessed control of
5 the alleged enterprise such that they were able to make the false statements and
6 omissions does not adequately allege violation of § 1962(b). Rather, Plaintiffs
7 would have to allege that the Toyota Defendants acquired or maintained an interest
8 in or control of the enterprise through their predicate acts. Because Plaintiffs have
9 not alleged that Defendants’ predicate acts led to their acquisition or maintenance
10 of an interest in or control of the RICO enterprise, they have not adequately alleged
11 a violation of § 1962(b).

12
13 Moreover, as with § 1962(a), Plaintiffs seeking civil damages for violation
14 of § 1962(b) must allege proximate causation. Oki Semiconductor, 298 F.3d at
15 773. To adequately allege proximate causation under § 1962(b), a plaintiff must
16 allege an “injury from the defendant’s acquisition or control of an interest in a
17 RICO enterprise” separate from an injury flowing from the racketeering activity

18
19 ³⁰ In making this argument, the Toyota Defendants inaccurately assert that
20 U.S. Concord, Inc. v. Harris Graphics Corp., 757 F. Supp. 1053, 1060 n.12 (N.D.
21 Cal. 1991), stands for the proposition that “the necessary pleading requirement for
22 subsection (b) is the averment of an injury that arises when a Defendant wrongfully
23 acquires control of an enterprise.” (Reply at 14, emphasis added.) Instead, U.S.
24 Concord observed that an adequate injury may arise where a defendant “acquire[s]
25 or maintain[s] an interest in or control of an enterprise.” Id. at 1160 (emphasis
added). The example in footnote 12 of U.S. Concord that the Toyota Defendants
rely on for their assertion is merely illustrative. Id. at 1160, n.12. Nonetheless, as
explained below, Plaintiffs have not adequately alleged a violation or proximately
caused injury under this subsection.

1 itself. U.S. Concord, 757 F. Supp. at 1060. Plaintiffs have not alleged any injury
2 other than the alleged economic loss flowing from the racketeering activity.
3 Therefore, Plaintiffs have failed to state a claim for violation of § 1962(b) because
4 they have not alleged an injury separate and distinct from the injury flowing from
5 the predicate acts. See OSRecovery, Inc. v. One Groupe Int’l, Inc., 354 F. Supp.
6 2d 357, 372 (S.D.N.Y. 2005) (“[T]o state a claim under Section 1962(b), a plaintiff
7 must allege that he suffered an injury resulting from the defendant’s acquisition or
8 maintenance of its interest, (i.e., an acquisition or maintenance injury), as distinct
9 from an injury caused by the predicate acts alone.”) (internal quotations and
10 citations omitted).

11
12 Accordingly, Plaintiffs have not stated a claim under § 1962(b).

13
14 D. Section 1962(c)

15
16 Section 1962(c) makes it “unlawful for any person employed by or
17 associated with any enterprise . . . to conduct or participate . . . in the conduct of
18 such enterprise’s affairs through a pattern of racketeering activity or collection of
19 unlawful debt.” 18 U.S.C. § 1962(c). “[T]o establish liability under § 1962(c) one
20 must allege and prove the existence of two distinct entities: (a) a ‘person’; and (2)
21 an ‘enterprise’ that is not simply the same ‘person’ referred to by a different
22 name.” Cedric Kushner Promotions, Ltd. v. King, 533 U.S. 158, 161 (2001). This
23 requirement that the RICO enterprise be distinct from the RICO person is often
24 called the “distinctness requirement.” See id. at 162.

1 In Cedric Kushner Promotions, the Supreme Court held that the distinctness
2 requirement was satisfied where the RICO person was an individual and the RICO
3 enterprise was his wholly owned corporation. Id. at 166. The Court explained that
4 “[t]he corporate owner/employee, a natural person, [was] distinct from the
5 corporation itself, a legally different entity with different rights and responsibilities
6 due to its different legal status.” Id. at 163. However, the Court distinguished that
7 case from cases where the corporate entity is both the “person” and the
8 “enterprise,” such as in Riverwoods Chappaqua Corp. v. Marine Midland Bank, 30
9 F.3d 339 (2nd Cir. 1994), where the “corporation was the ‘person’ and the
10 corporation, together with all its employees and agents, were the ‘enterprise.’”
11 Cedric Kushner Promotions, 533 U.S. at 164. Although the Supreme Court “did
12 not consider the merits of such cases,” the Court “note[d] their distinction from”
13 the facts presented in Cedric Kushner Promotions. Id. at 164.
14

15 The instant case is much more similar to Riverwoods Chappaqua than
16 Cedric Kushner Promotions. Plaintiffs in the instant case allege that the corporate
17 family of Toyota Defendants constitute both the “person” and the “enterprise” for
18 the purpose of RICO. Although Plaintiffs identify conduct committed by certain
19 individual employees, none of the employees are named as defendants. Nor have
20 Plaintiffs alleged all of the elements of fraud, such as intent to deceive, with
21 respect to those individuals. Accordingly, Plaintiffs have not alleged that those
22 individuals committed any of the predicate acts of racketeering. Instead, Plaintiffs
23 explicitly allege that the Toyota “Defendants are ‘persons’ as defined by 18 U.S.C.
24 § 1961(3),” (¶ 313), and the Toyota “Defendants, [their] worldwide affiliates, and
25 their salespersons” constitute the “enterprise.” (¶ 306.) Plaintiffs therefore have

1 not satisfied the distinctness requirement. See Living Designs, 431 F.3d at 361
2 (observing that, where “the ‘person’ alleged was [the corporate defendant] . . . if
3 the ‘enterprise’ consisted only of [the corporate defendant] and its employees, the
4 pleading would fail for lack of distinctiveness”) (citing Cedric Kushner
5 Promotions, 533 U.S. at 164); Fogie v. THORN Americas, Inc., 190 F.3d 889, 897
6 (8th Cir. 1999) (finding distinctness requirement not met where the plaintiffs
7 alleged “that the RICO enterprise consist[ed] solely of wholly owned, related
8 business entities, and that some of the wholly owned subsidiaries conducted the
9 racketeering activities for the enterprise”); Ice Cream Distrib. of Evansville, LLC
10 v. Dreyer’s Grand Ice Cream, Inc., No. 09-5815 CW, 2010 WL 3619884, at *5
11 (N.D. Cal. Sept. 10, 2010) (citations omitted) (“[A] § 1962(c) claim [cannot] be
12 based on a RICO enterprise comprised of a corporation, a wholly-owned subsidiary
13 and an employee of that corporate family if these entities were also plead as the
14 RICO persons.”).

15
16 This conclusion comports with the purpose of RICO. As the Supreme Court
17 observed in Cedric Kushner Promotions, insofar as RICO seeks “to prevent a
18 person from using a corporation for criminal purposes, . . . the person and the tool[]
19 are different entities, not the same.” 533 U.S. at 162. Here, Plaintiffs allege that
20 the person and the tool are the same entities and, therefore, Plaintiffs have not met
21 the distinctness requirement.

22
23 Accordingly, Plaintiffs have not stated a claim under § 1962(c).
24
25

1 E. Section 1962(d)

2
3 Section 1962(d) prohibits any person from conspiring to violate any of the
4 aforementioned subsections. Because Plaintiffs have failed to state a claim under
5 subsections (a), (b), or (c), their claim under subsection (d) likewise fails. Turner
6 v. Cook, 362 F.3d 1219, 1231 n.17 (9th Cir. 2004); Religious Tech. Ctr. v.
7 Wollersheim, 971 F.2d 364, 367 n.8 (9th Cir. 1992).

8
9 F. Disposition of RICO Claims

10
11 For these reasons, Plaintiffs' claim for violation of RICO is dismissed. The
12 Court grants Plaintiffs leave to replead the RICO claim as asserted under § 1962(c)
13 and § 1962(d) (to the extent it is premised on a § 1962(c) violation), but dismisses
14 with prejudice the RICO claim as asserted under § 1962(a), (b), and (d) (to the
15 extent it is premised on § 1692(a) or (b)).

16
17 X. California Consumer Fraud Claims and Fraudulent Concealment

18
19 The parties do not dispute that Plaintiffs' consumer and common law fraud
20 claims must satisfy the heightened pleading requirement under Federal Rule of
21 Civil Procedure 9(b). (Defs.' Mem. at 14; Opp'n at 15.) That is, Plaintiffs must
22 allege the "who, what, when, where, and how" of the fraudulent conduct charged.
23 Vess, 317 F.3d at 1106. As Plaintiffs argue, a pleading is sufficient under Rule
24 9(b) if it identifies the circumstances constituting fraud so that a defendant can
25 prepare an adequate answer from the allegations. (Opp'n at 15 (citing Moore, 885

1 F.2d at 540).) While statements of the time, place, and nature of the alleged
2 fraudulent activities are sufficient, mere conclusory allegations of fraud are
3 insufficient. Moore, 885 F.2d at 540.

4
5 A. CLRA, UCL, and FAL

6
7 The Toyota Defendants argue that Plaintiffs have not established where and
8 when the Toyota Defendants distributed marketing materials outside the United
9 States or made representations Plaintiffs saw. (Defs.' Mem. at 15.) The Toyota
10 Defendants also argue that Plaintiffs have not alleged who made the
11 representations, what the representations were, and how they were made. The
12 "who" cannot be satisfied by undifferentiated allegations attributed to the Toyota
13 Defendants as a group. Swartz, 476 F.3d at 764 ("Rule 9(b) does not allow a
14 complaint to merely lump multiple defendants together but 'requires plaintiffs to
15 differentiate their allegations when suing more than one defendant . . . and inform
16 each defendant separately of the allegations surrounding his alleged participation
17 in the fraud.'"). Although there is an issue here as to whether the applicable
18 consumer statutes have extraterritorial application, even if they did, the Court finds
19 that Plaintiffs have not pled these claims with a sufficient degree of particularity to
20 meet the requirements under 9(b).

21
22 As an example of the pleading deficiencies, the Court uses the first two
23 parties listed in the AFELMCC, Laura Jimenez Centeno and Eliza Esquivel
24 Lozano, both residents of Mexico. They allege they "saw advertisements for
25 Toyota vehicles on television, in magazines, on billboards, in brochures at the

1 dealership, and [on] Toyota's website for several years" before 2007 and 2008,
2 respectively, when they purchased their Toyota vehicles. (§§ 36-37.) Both
3 Plaintiffs allege that "safety and reliability were consistent themes" across the
4 advertisements they saw. (*Id.*) These allegations appear to be repeated for every
5 party listed as a plaintiff in this section, with some differences in the length of time
6 a plaintiff saw the advertisements (§ 45 (alleging plaintiff saw advertisement
7 "months" before purchase, instead of years)); whether a plaintiff saw
8 advertisements on the Internet (§ 57; § 58 (no allegations of type of media through
9 which advertisements were disseminated)); and whether a plaintiff saw
10 advertisements that discussed only the safety of the vehicles (as opposed to safety
11 and reliability) (§ 59). Missing from the allegations about each Plaintiff, however,
12 is a connection between the representations each Plaintiff alleges he or she saw,
13 and the Toyota Defendants' marketing practices in the United States. (Defs.'
14 Mem. at 11.)

15
16 Plaintiffs allege what the representations were (claims about safety and
17 reliability); when the representations were made (several years before the purchase
18 of the vehicles); and how they were made (television, magazines, billboards,
19 brochures, and websites). However, the allegations do not state who made the
20 representations or where the Plaintiffs saw them. Allegations about "Toyota
21 advertisements," without particularity, are insufficient to establish who made
22 which statements. Plaintiffs do not allege a connection between specific Toyota
23 Defendants and advertisements disseminated outside of the United States.
24 Moreover, Plaintiffs do not allege where they saw the representations — whether
25

1 in their home countries or elsewhere.³¹ Failing to plead the “who” and “where”
2 requirements of Vess necessarily means that Plaintiffs have not met the pleading
3 requirements under Rule 9(b). Thus, even if the California state statutes had an
4 extraterritorial reach such that Plaintiffs could recover on any of their consumer
5 law claims, the allegations in the AFELMCC are insufficient to meet the pleading
6 standard under Rule 9(b).

7
8 B. Fraudulent Concealment

9
10 The Toyota Defendants raise the same arguments recited above in support of
11 their argument that Plaintiffs’ fraudulent concealment claim under California law is
12 deficient under Rule 9(b). (Defs. Mem. at 15.) They also argue with respect to the
13 fraudulent concealment claim that Plaintiffs fail to allege specific facts regarding
14 each Toyota Defendant’s knowledge of, and concealment of, purported defects of
15 vehicles marketed to or purchased by foreign Plaintiffs. (Id.)

16
17 A fraud by omission or fraud by concealment claim “can succeed without
18 the same level of specificity required by a normal fraud claim.” Baggett v.
19 Hewlett-Packard Co., 582 F. Supp. 2d 1261, 1267 (C.D. Cal. 2007). However,
20 fraud by concealment is actionable only if the defendant had a duty to disclose the
21 concealed fact. Id. at 1267.

22
23 ³¹ At least one putative Plaintiff, Paul Anthony Banton of Jamaica, could
24 have seen advertisements in the United States and in his home country, but he is
25 not properly included in the foreign class because his vehicle was manufactured in
the United States. See supra note 14.

1 Plaintiffs sufficiently allege a duty to disclose because they claim that
2 Toyota had exclusive knowledge of material facts, actively concealed material
3 facts, and made partial representations and suppressed other material facts.
4 (¶¶ 451-52.) See Baggett, 582 F. Supp. 2d at 1267-68. Plaintiffs also sufficiently
5 allege justifiable reliance, stating that representations regarding safety and
6 reliability influenced their purchasing decisions, and that they would not have
7 purchased a Toyota, or paid as much for it, had they known of the defect, (¶¶ 36-
8 79), as well as resulting damages (see, e.g., id.; ¶¶ 45, 292, 456).

9
10 Plaintiffs' remaining allegations are sufficient to plead the "what"
11 (concealment of an SUA defect (¶¶ 5, 10, 17, 25, 100, 135, 167, 222-23, 274, 452-
12 53)), the "why" (to induce customers to purchase Toyota cars at the prices sold
13 (¶ 453)), and the "how" (instead of telling consumers and the government about
14 SUA problems, the problems were concealed so as not to disrupt Toyota's business
15 (¶¶ 10, 24, 119, 140, 145, 153, 155, 168-70, 183, 196, 211)). Baggett, 582 F.
16 Supp. 2d at 1265.

17
18 However, as with their consumer fraud claims, Plaintiffs fail to allege the
19 "who" and the "where." As the Court explained above, general allegations about
20 statements, or omissions, by "Toyota" are insufficient to establish which Defendant
21 made which statements and/or omissions. Plaintiffs also fail to plead facts
22 supporting the contention that the Toyota Defendants fraudulently concealed facts
23 from foreign Plaintiffs; namely, specific facts alleging the "where" are wholly
24 wanting. Although nearly identical allegations may have sufficed in the domestic
25 Plaintiffs' complaint, the issue of "where" was not present. Here, Plaintiffs name

1 several domestic Toyota Defendants, as well as TMC, but fail to explain how the
2 Defendants interacted with foreign Plaintiffs such that Toyota's alleged fraudulent
3 omissions reached and impacted foreign Plaintiffs.

4
5 Thus, Plaintiffs' fraudulent concealment claim is insufficiently pled under
6 Rule 9(b).

7
8 XI. Conclusion

9
10 As set forth more fully herein, the Court dismisses the AFELMCC in its
11 entirety on the bases of standing, improper joinder, the failure to plead certain
12 claims sufficiently, and the failure to establish that certain statutes may be applied
13 extraterritorially. Moreover, for the reasons set forth more fully herein, the Court
14 dismisses with prejudice certain claims set forth in the AFELMCC. Those claims
15 are:

- 16 • All claims asserted against TMCC;
- 17 • Plaintiffs' first cause of action (RICO) to the extent the claim is based
18 on § 1962(a), (b), and (d) (to the extent it is premised on § 1692(a) or
19 (b);
- 20 • Plaintiffs' fourth cause of action (FAL), as to all the Toyota
21 Defendants;
- 22 • Plaintiffs' fifth through ninth causes of action (claims for breach of
23 express warranty, breach of implied warranty of merchantability,
24 revocation, violations of the MMA, and breach of contract/common
25 law warranty) as to the U.S. Toyota Defendants to the extent that they

1 are premised on the sale (or lease) of an allegedly defective vehicle;
2 and

- 3 • Plaintiffs' thirteenth cause of action for unjust enrichment as to all the
4 Toyota Defendants.

5
6 The Court grants Plaintiffs 60 days leave to replead those claims and issues
7 that have been dismissed without prejudice.

8
9 Although granting leave to replead, the Court, at the hearing, accepted the
10 suggestion of the Toyota Defendants that certain issues be subject to an offer of
11 proof. Accordingly, the grant of leave to replead is subject to a requirement that
12 Plaintiffs make an offer of proof as to a number of outstanding issues. Specifically,
13 within 20 days of the entry of this Order, Plaintiffs shall file an offer of proof as to
14 the following issues:

- 15 • How Plaintiffs would resolve the current joinder pleading defects;
16 • How Plaintiffs would tie the actions of the U.S. Toyota Defendants
17 and TMC to any manufacturing claim in the various countries where
18 the vehicles were manufactured; and
19 • How, in light of the foregoing requirement regarding manufacturing
20 claim(s), Plaintiffs plan to replead claims against TEMA.

1 The Toyota Defendant may file a response thereto within 10 days of filing.

2 **IT IS SO ORDERED.**

3
4 DATED: April 8, 2011



5
6 JAMES V. SELNA
UNITED STATES DISTRICT JUDGE